125

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.

426 STATE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE: (203) 946-4811
FAX (203) 498-9271

August 7, 2006

Michael O. Leavitt
Secretary, United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Fed.Reg. 39214 (July 12, 2006)

Dear Secretary Leavitt:

We are a non-profit legal services organization in Connecticut which routinely represents low-income citizens seeking coverage, or seeking to retain coverage, under the Medicaid program. We are sending you our comments on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

We submit these comments because of our serious concerns about CMS's interpretation of the law and its likely detrimental impact on vulnerable children, parents, pregnant women and persons with disabilities. We anticipate delays in critical health care coverage to new applicants and the potential loss or denial of Medicaid coverage for those who, despite best efforts, are unable to document their citizenship. The Connecticut Department of Social Services (DSS), without new or additional resources, is making substantial efforts to comply with the law and to minimize the harm to applicants and enrollees. To do this, however, DSS has had to divert scarce resources from other efforts to assure health care access and services for our state's vulnerable populations.

We applaud the Secretary's decision to ease implementation of the Medicaid documentation requirement for some citizens by exempting Medicare and SSI beneficiaries from the requirement, and by allowing the state Medicaid agency to access vital records to document the birth of US citizens born in our state without waiting for individuals to show they have unsuccessfully attempted to obtain paper records. We remain concerned, however, that the interim final rule goes beyond what Congress intended and will deny or delay access to health care for many United States citizens, including pregnant women and children, especially children in state foster care programs.

We urge CMS to make the following revisions to ensure that eligible pregnant women, parents, children and persons with disabilities receive Medicaid benefits without experiencing delays, disruptions or denials of coverage. We believe these revisions are particularly appropriate because the new law does not address any documented problem of non-United States citizens fraudulently receiving Medicaid coverage. You are no doubt aware of the finding by HHS's Office of Inspector

General in its report "*Self-Declaration of US Citizenship for Medicaid*" that there was no substantial evidence that non-citizens are obtaining Medicaid by falsely claiming citizenship. And here in Connecticut an audit by our Department of Social Services over a four-year period did not uncover a single case of an applicant falsely declaring citizenship.

Applicants and enrollees should not be required to submit originals or certified copies of documents.

The DRA does not require applicants and enrollees to submit original or certified copies to meet the new citizenship documentation requirement. CMS has added this provision in the interim final regulation at 42 CFR 435.407(h)(1). We are convinced that CMS's estimate that it will take applicants and enrollees "ten minutes" and state agencies "five minutes" to comply with the requirement that individuals provide original or certified copies to the Medicaid agency is unrealistic.

In Connecticut, we have worked hard to simplify the eligibility process. We no longer require pregnant women and families to undergo a face-to-face interview to apply for or renew Medicaid coverage. In addition, after experiencing a steep decline in family enrollment after the repeal of self-declaration of income procedures in June 2005, the legislature and Governor agreed to reinstate self-declaration last month (July 2006). We fear that the increased efficiency to be gained by the reinstatement of self-declaration will now be lost due to this new citizenship documentation burden. Moreover, the Department of Social Services has seen a dramatic decrease in its staffing over the last several years, as well as a reduction in the number of its offices. As a result, it is a hardship for some people to travel increased distances to reach a regional DSS office, particularly in a state without a mass transit system. Even if people manage to get to a DSS office, the state agency is not currently equipped to deal with a dramatic increase in foot traffic at its local offices.

While the regulations allow for documents to be mailed, it is unlikely that individuals will send original documents, such as passports, birth certificates, and driver's licenses through the mail, risking the misplacement or loss of these important personal papers. Moreover, people are not permitted to drive without their licenses so it is implausible that anyone would mail his or her driver's license to DSS. Low-income working families on Medicaid can ill afford to take time off from work to bring such documents to DSS offices. Based on past experience, we fear that these families will forego health care coverage rather than risk loss of pay or jobs in order to make the required trips to state offices. We have seen in Connecticut that any additional paperwork, however seemingly benign in intent, acts as a barrier to enrollment. As mentioned above that is why state lawmakers wisely restored self-declaration of income procedures this summer

We, therefore, urge CMS to eliminate this requirement and allow copies of documents to be submitted by applicants and enrollees. Under current law, state Medicaid agencies have always had the authority to require additional proof of citizenship where the person's declared statement is questionable. This is unchanged by the DRA and the interim final regulations.

U.S. citizen pregnant women, children, parents, and persons with disabilities applying for benefits should be able to receive benefits while they obtain the documents they need.

The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid

coverage for large numbers of eligible, low-income pregnant women, children, parents, and persons with disabilities. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

In Connecticut, DSS officials and others are working together to develop an expedited family planning waiver program that would permit a simplified enrollment process for patients seeking family planning services at family planning clinics. Connecticut is thoughtfully building on successful models in other states, but it will now be difficult to implement such a program in light of the application of the citizenship documentation rule to this population of mostly young and vulnerable women. These young women are unlikely to carry with them their citizenship papers, and will be reluctant to make multiple trips to the clinics in order to obtain family planning services.

The rule will delay coverage for other vulnerable groups, such as persons with disabilities who are not on SSI, but receive Social Security Disability Insurance (SSDI), and are awaiting Medicare coverage. (As you know, the waiting period for Medicare coverage is 24 months from the date of the disability determination for SSDI). These people are not exempt from the citizenship and identity documentation requirements under the DRA and the interim final regulations. We are aware of a very recent case in point where an individual was diagnosed with a terminal illness. He has just applied for both Social Security Disability Insurance and Medicaid. He should not have to experience delays in receiving Medicaid coverage and the critically needed care that will ease his final days.

Although DSS has every intention of accessing Connecticut vital records in order to document the birth of US citizens born in this state as appropriate, the system is not yet in place, will likely experience glitches as all systems do, and will not address the need for documentation from US citizens born in other states.

Congress did not make documentation of citizenship a condition of receiving Medicaid benefits, and in fact instructed CMS through another provision of the Medicaid Act to not approve state Medicaid plans that impose "any citizenship requirement which excludes any citizen of the United States" as a condition of eligibility for the program. See 42. U.S.C. 1396a(b)(3). Therefore, when applicants show that they meet all eligibility criteria and make a sworn declaration of citizenship, they should receive benefits while they get the documents they need. This is the rule for legal non-citizens whose legal status makes them eligible for Medicaid, and the same rule should be applied to citizens.

We urge you to revise 42 CFR 435.407(j) to allow applicants who declare they are U.S. citizens or nationals and who have shown that they meet the state's Medicaid eligibility criteria to receive Medicaid coverage while they obtain the documents they need to meet the new requirement.

Children who are eligible for federal foster care payments should be exempt from the citizenship documentation requirement.

The interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children, except those eligible for Medicaid based on their receipt of SSI benefits. There are about 7,000 children in Connecticut's foster care programs, including approximately 3,000 children

receiving federal foster care assistance under Title IV-E, who are subject to the citizenship documentation requirement.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216. (It has been reported that CMS takes the view that foster care children should be treated as current beneficiaries rather than applicants for this purpose, but there is no language to this effect in either the rule itself or the preamble.)

In the DRA, Congress allowed CMS to exempt individuals who are eligible for other programs that require documentation of citizenship. The IV-E program is precisely such a program. Foster children in the care of the state need immediate access to medical coverage. There is no reason to delay their Medicaid coverage when child welfare agencies have already verified that they are citizens or to add unnecessary and duplicative burdens to state agencies.

We urge you to revise 42 CFR 435.1005 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement.

Newborns

Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. While the rule allows extracts of a hospital record created near the time of birth to be used as proof of citizenship, 42 CFR 435.407(c)(1), and a medical (clinic, doctor, or hospital) record created near the time of birth to be used in the "rarest of circumstances," 42 CFR 435.407(d)(4), there is no reason that states should have to obtain this information. There is also no reason that newborns should experience delays in receiving Medicaid coverage while these documents are obtained. When a state Medicaid agency pays for a child's birth in a U.S. hospital, the child is by definition a citizen. Further proof should not be required for newborns whose birth is paid for by a state's Medicaid program. Risking the health of newborns and increasing the potential for uncompensated care is unnecessary in this situation.

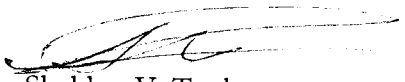
We urge you to amend 42 CFR 435.407(a) to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

Homeless individuals, victims of natural disasters and others whose records have been destroyed or can't be found should be permitted alternative methods for proving citizenship.

The regulations make no provision for situations in which individuals' documents have been destroyed or lost, or an illness, such as dementia, prevents a person from obtaining the documentation, even with the help of the state. Connecticut and other states should be given the discretion to use alternative means to verify citizenship and identity. A state Medicaid agency should also be allowed to waive the requirement when compliance would cause hardship to the individual, and its staff has reason to conclude that the person is a US citizen or national.

Thank you for the opportunity to submit these comments. Please let us know if there is any further information we can provide to assist you in understanding the seriousness of the problems with the proposed rule which we have outlined above.

Sincerely,



Sheldon V. Toubman
Staff Attorney

126

Planned Parenthood
Serving Minnesota · North Dakota · South Dakota

1965 Ford Parkway
St. Paul, Minnesota 55116-1996
(651) 698-2401
(651) 698-2405 fax
www.ppmns.org

August 7, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicaid Citizen Documentation Interim Rule, 71 Fed. Reg. 39214 (July 12, 2006)

As a provider of family planning services to 70,000 low-income women in Minnesota and South Dakota, we are writing to comment on the interim rule to implement section 6036 of the Deficit Reduction Act of 2005 (DRA), which requires U.S. citizens applying for or receiving Medicaid to provide proof of citizenship and identity. Planned Parenthood Minnesota, North Dakota, South Dakota is very concerned by the negative impact this provision will have on the effective delivery of family planning services resulting in considerable unintended pregnancies within our patient population.

In particular we are very concerned by the anticipated delay in providing continuous contraceptive supplies to newly enrolled patients in Minnesota's Medicaid family planning waiver. Although CMS granted permission for the Minnesota Department of Human Services to expand Medicaid family planning services under a section 1115 demonstration project in 2004, our state administration did not officially begin this project until July 1, 2006. To date less than 2,000 individuals have been enrolled in the Minnesota Medicaid family planning waiver although the state goal is to have 200,000 enrolled within three years.

The primary reason that the Minnesota Department of Human Services was unable to immediately implement the 1115 family planning waiver upon notification of project approval from CMS in 2004 was difficulty with developing a sufficiently sophisticated computer system that could coordinate the various public programs administered within the department. To date this computer system has not been realized. Applications for eligibility within the newly established Minnesota Medicaid family planning program are currently being manually approved by a few staff members responsible for reviewing all statewide applications. Although we are very appreciative of the Minnesota Department of Human Services sincere efforts to implement our Medicaid family planning waiver to meet the needs of both the patients and the providers, we believe that it would be prudent to assume that there will be difficulty within the state agency in verifying citizen documentation in a timely manner until the new computer system is available.

Family planning services are time-sensitive, cost-effective and critical in helping low-income women avoid unplanned pregnancies. These services prevent an estimated 1.3 million unplanned pregnancies each year, and without these services, our nation's abortion rate would be 40 percent higher than it is. Our state administration pointed out in our original section 1115 waiver application that each Medicaid birth costs approximately $10,000 in prenatal care, delivery and first-year-of-life costs versus $500 per year for preventative contraceptive services. This past legislative session, the Minnesota Department of Finance indicated that an additional 2,000 Medicaid births per year would cost approximately 21 million dollars in combined federal (11 million) and state (10 million) dollars annually.

Medicaid is playing an increasingly important role in funding contraceptive services to low income individuals both nationally, providing six in 10 of all federal public dollars spent on family planning, and locally in Minnesota where our only state funded family planning program that provides birth control services to undocumented residents, the Family Planning Special Projects grant administered by the Minnesota Department of Health, is scheduled for a fifty percent reduction in the next fiscal biennium.

In Minnesota Planned Parenthood has been the major provider of Title X family planning services throughout our state. For more than three decades, our Title X birth control clinics have been an integral component of Minnesota's public health care system, providing high-quality family planning services and other preventive health care to low-income or uninsured individuals who may otherwise lack access to health care. However, the systematic under-funding of the Title X program poses significant challenges to our continued ability to provide these services in the rural areas of our state.

Health care inflation has far outstripped funding for Title X clinic services, which are further strapped as a result of new and expensive contraceptive technologies, improved and expensive screening and treatment for STDs and the expense of training and retaining qualified health care personnel in an era of nursing shortages. Had Title X funding kept up with inflation since 1980, funding would be $699 million nationally, yet the program has been level-funded by Congress at $283 million in the coming fiscal year.

Our Minnesota Planned Parenthood Title X program would be unable to serve our current patient population without the section 1115 Medicaid waiver assistance let alone absorb additional clients. Recently, the Guttmacher Institute estimated that there has been a 7.3% increase of women in Minnesota needing publicly funded contraceptive supplies and services since 2000, an estimated 18,000 additional individuals whom local family planning providers are financially strapped in trying to accommodate.

Although no one in Minnesota can provide an accurate number, we suspect that there are a significant percentage of undocumented individuals within our new population in need of family planning services and we believe it is in everybody's best interests to assure continued access to family planning services for these women. In addition, throwing what would be a sizable impediment in the path of individuals seeking to enroll in our family planning programs, the CMS interim rule on immigrant documentation mandates will lead to confusion, delays in service and increased administrative costs during a very important initial enrollment period for our state's new section 1115 family planning waiver.

We therefore urge CMS to modify sections 435.406 and 436.406 of the interim final rule to allow individuals receiving benefits under section 1115 family planning demonstrations to attest to citizenship in order to comply with the statute. Requiring these individuals to document citizenship according to the specifications set forth in the July 12 notice would delay or even preclude the receipt of this time-sensitive care, resulting in an increase in unplanned pregnancies, unplanned births and abortions among low-income Americans. Denying women access to this cost-effective care would result in significant costs to both the federal and state governments.

Thank you for your consideration of our comments.

Sarah Stoesz
President/CEO

127

Catholic Charities USA®

Providing Help.
Creating Hope.

1731 King Street
Alexandria, VA 22314
Phone 703.549.1390
Fax 703.549.1656
www.catholiccharitiesinfo.org

August 10, 2006

Mark B. McClellan, MD., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Medicaid Citizenship Documentation Interim Final Rule 71 Federal Register 39214 (July 12, 2006)

Dear Dr. McClellan:

On behalf of Catholic Charities USA, we submit the following comments on the Interim Final Rule regarding citizenship documentation for Medicaid applicants and recipients. Catholic Charities USA is one of the nation's largest private networks of social service agencies working to reduce poverty and support families throughout the United States. In all, almost 1,800 agencies and institutions provide essential services to more than 7 million people annually. Many of these individuals utilize Medicaid to access critical medical services.

Catholic Charities USA is encouraged by recent clarification from the Centers for Medicare and Medicaid Services (CMS) stating that the new citizenship requirement will exempt certain vulnerable populations. We also commend CMS for clarifying that the new requirement will not apply to presumptive eligibility for pregnant women. The interim final rule, with its exemption of individuals enrolled in both Medicare and Medicaid, those eligible for Medicaid because of SSI eligibility, and the allowance for states to cross-match information using specific databases, addresses several critical needs. However, the interim final rule still jeopardizes the receipt of vital services for very vulnerable children and other individuals.

Catholic Charities USA remains concerned about the impact some of the other requirements will have on the vulnerable populations we serve. Catholic Charities

USA and our affiliate agencies urge CMS to modify the final rule in the following areas:

- ***435.1008 Exemption for Children Receiving Foster Care Assistance:*** Catholic Charities USA urges CMS to exempt children in foster care from the additional documentation requirements specified in the interim final rule for several reasons. As our agencies confirm every day, foster children are at special risk because of the serious health care needs they have as a result of abuse and neglect that brought them to the attention of the child welfare system in the first place. The states have the responsibility under state and federal laws, to work in a timely fashion to ensure the safety, permanency and well-being of the children in their care. The documentation requirements in the interim final rule would work directly in opposition to that goal and could undermine good faith efforts to achieve it. This requirement is particularly unnecessary for children receiving federal foster care assistance because their eligibility for that assistance already requires verification that the child is a citizen or a legal non-citizen. While some have raised issues about that process, any improvements should not come at the expense of timely needed services to children in state care. Improvements in protecting and caring for foster children and in increasing program efficiencies and effectiveness are not likely to result from the duplication of processes and procedures in related programs. We believe exempting children in foster care offers the best course for these vulnerable children, and will help achieve better outcomes in the short and long-term.

- ***435.407 (h)(i) Original Documentation:*** The interim final rule requires that individuals submit original documents to meet the new documentation requirements. This is not an explicit requirement of the DRA and it will significantly limit state efforts in recent years to work with community groups to expand electronic applications and simplify the Medicaid application process. This provision will only delay coverage for new applicants who will be forced to schedule appointments with the Medicaid agency to fulfill the requirement. Recent evidence from Catholic Charities agencies has shown that returning to face-to-face applications significantly increases the number of uninsured- eligible individuals in communities. This occurs because more families are discouraged from completing applications or some states simply do not have the capacity to process applications in a timely manner. We urge CMS to reconsider and to eliminate this requirement because it will unintentionally increase the level of face-to-face visits and create additional barriers to accessing proper medical care.

- ***435.407(a)-(d) Expansion of Allowed Documents:*** We ask that CMS take into consideration certain difficulties special needs populations such as the homeless, mentally ill, and hurricane victims might have in locating the documentation needed to prove their citizenship. We also ask that you

provide sufficient flexibility in the final guidance to respond to special circumstances such as hurricanes or other national emergencies. We encourage CMS to expand the list of acceptable documentary evidence of citizenship, or at a minimum maintain the current list. We also encourage CMS to expand the list of allowable documents for meeting the proof of identity requirement.

- ***435.407(j) Reasonable Opportunity to Present Evidence*:** Implementing restrictive documentation requirements will create additional barriers for millions Medicaid beneficiaries. Many of these individuals suffer from severe illnesses that could result in a significant health crisis if the slightest interruption to their health care occurs. While the DRA establishes a new documentation requirement for application and renewal of Medicaid benefits, it does provide broad flexibility for CMS to help states develop progressive policies. The interim final rule allows states to give applicants or recipients a "reasonable opportunity" to submit satisfactory documentary evidence of citizenship. However, the preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." (71 Fed. Reg. at 39216). Under the DRA, documentation of citizenship is not a requirement for Medicaid eligibility and there is nothing in the statute that requires a delay in providing coverage. We urge you to utilize that flexibility in the DRA to ensure that applicants who declare they are U.S. citizens and meet other Medicaid eligibility criteria will not experience delays in receiving the excellent health care they deserve.

- ***Implementation Date*:** We are very concerned that the July 1, 2006 implementation will not give states sufficient time to implement guidance and communicate new requirements to clients and community partners. We are concerned that this will increase the number of families who will experience significant interruptions in critical medical services. We urge CMS to give states the flexibility to provide Medicaid benefits to special populations who might have difficulties finding appropriate documentation, but are otherwise eligible for Medicaid.

- ***Communication and Outreach*:** We ask that CMS issue clear, comprehensive guidance and provide large scale outreach strategies so that community organizations such as Catholic Charities agencies can properly communicate with their clients about the types of documents they will need to continue accessing Medicaid services.

Catholic Charities USA is deeply concerned that if the final guidance does not provide flexibility, it will create long term crisis in the type of health care low-income families receive. Our Catholic teaching on the dignity of human life requires us to serve and advocate on the behalf of those who are the most vulnerable.

We hope that you will assist us in our work by issuing reasonable Medicaid guidance in these areas.

Sincerely,

Candy Hill
Senior Vice President for Social Policy

RICK RENZI
1ST DISTRICT, ARIZONA

416 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2315
FAX: (202) 225-8798

FLAGSTAFF OFFICE:
123 NORTH SAN FRANCISCO STREET, SUITE 105
FLAGSTAFF, AZ 86001
(928) 213-3434
TOLL FREE: (866) 537-2800
FAX: (928) 213-5447

www.house.gov/renzi
rick.renzi@mail.house.gov

Congress of the United States
House of Representatives

HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE
SUBCOMMITTEE ON HUMAN INTELLIGENCE, ANALYSIS AND COUNTERINTELLIGENCE
SUBCOMMITTEE ON INTELLIGENCE POLICY
SUBCOMMITTEE ON OVERSIGHT

FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY

RESOURCES COMMITTEE
SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

128

June 9, 2006

The Honorable Michael Leavitt
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Leavitt:

We are writing to share our significant concerns about a section of the Deficit Reduction Act (DRA, P.L. 109-171), specifically, Section 6036. This provision requires Medicaid applicants to produce "satisfactory documentary evidence" of U.S. citizenship or nationality to qualify for benefits. While the statute cites acceptable documents such as a U.S. passport, U.S. Certificate of Naturalization, or Certificate of U.S. Citizenship, it also permits the Secretary to specify, by regulation, other documents that can reliably prove U.S. citizenship. This requirement will be made effective July 1, 2006.

We agree that a policy needs to be developed to satisfy the DRA requirement and we strongly support the need to ensure Medicaid's integrity. We are also very concerned about citizens who may be unable to provide documentation under these guidelines. For example, Native Americans do not generally have paper records of their births. Others, such as many older Americans, do not have birth certificates because they were born at home and their births were never "officially" registered. Under this section of the DRA, these types of individuals, without proper documentation, may be ineligible for Medicaid benefits or terminated from the program.

Any policy developed needs to have maximum flexibility in order to minimize any negative impact on Medicaid beneficiaries and the ability of states and health care providers to enroll patients in the program.

We ask that you include a "grandfather" provision to allow for presumptive eligibility for people who do not have the capabilities to obtain proper identification documents. Some examples include Native American populations, Alzheimer's patients, those who are homeless, mentally impaired, the elderly who never had documentation of their birth, and patients involved in emergency situations who may have lost their identification documents. We have concerns about the policy moving forward narrowly defined, as that could create enrollment barriers for millions of low-income citizens who otherwise meet all Medicaid eligibility requirements. We must avoid an environment where

SHOW LOW OFFICE:
1151 EAST DUECE OF CLUBS
SUITE A
SHOW LOW, AZ 85901
(928) 537-2800
TOLL FREE: (866) 537-2800
FAX: (928) 532-5098

PRESCOTT OFFICE:
107 NORTH CORTEZ
SUITE 208
PRESCOTT, AZ 86301
(928) 708-9120
FAX: (928) 708-9121

CASA GRANDE OFFICE:
501 N. FLORENCE ST.
SUITE 101
CASA GRANDE, AZ 85222
(520) 876-0929
FAX: (520) 876-0974

WINDOW ROCK OFFICE:
DNA LEGAL SERVICES BUILDING
HIGHWAY 264 & ROUTE 12
P.O. BOX 4673
WINDOW ROCK, AZ 86515
CELL: (928) 607-0792
FAX: (928) 871-4679

SAN CARLOS OFFICE:
EPA BUILDING
10 WEST TONTO
P.O. BOX 0
SAN CARLOS, AZ 85550
(928) 853-3750
FAX: (928) 428-7005

WHITERIVER OFFICE:
APACHE VETERAN'S CENTER
201 EAST WALNUT
WHITERIVER, AZ 85941
CELL: (928) 853-3750
FAX: (928) 213-5447

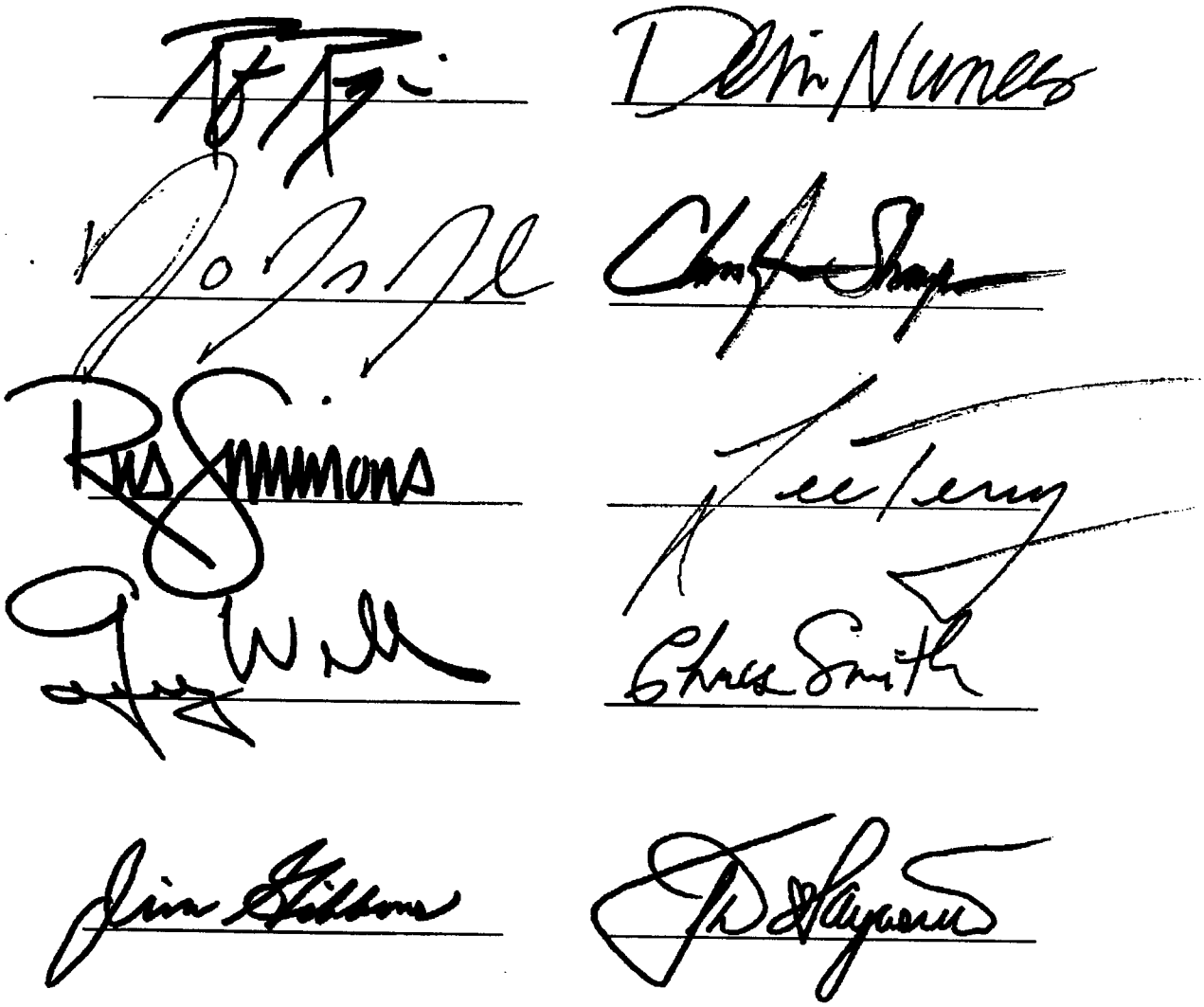
SAFFORD OFFICE:
1420 S. 1ST AVENUE
SUITE 100
SAFFORD, AZ 85546
(928) 428-6194
FAX: (928) 428-5006

individuals may not seek needed care because they lack appropriate documents. Such a result ultimately could have a negative impact on our public health system.

Medicaid plays a vital role in assuring access to health care for our nation's uninsured patients. While ensuring Medicaid's integrity is paramount, we are concerned that limiting access to Medicaid with an inflexible documentation policy would be a great disservice to those we have committed to serve and protect.

We look forward to working with you to develop an acceptable policy that preserves the Medicaid safety net for America's most needy populations.

Sincerely,



Heather Wilson

Planned Parenthood®
Public Policy Network of Washington

Bellevue
Bellingham
Bremerton
Centralia
Cheney
Cle Elum
Colfax
Ellensburg
Everett
Federal Way
Friday Harbor
Issaquah
Kenmore
Kent
Longview/Kelso
Kennewick
Lynnwood
Marysville
Monroe
Mount Vernon
Oak Harbor
Olympia
Pasco
Port Orchard
Pullman
Puyallup
Salmon Creek
Seattle
Shelton
Silverdale
Spokane
Sunnyside
Tacoma
University Place
Walla Walla
Wapato
Vancouver
Yakima

Main Office
2001 E Madison
Seattle, WA 98122
Tel: (206) 328-7735
Fax: (206)328-6810

August 10, 2006

Administrator Mark B. McClellan, M.D., Ph.D
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

RE: Interim Final Rule to Implement Section 6036 of the Deficit Reduction Act of 2005

Dear Administrator McClellan:

Planned Parenthood Public Policy Network of Washington ("The Network") is urging you to consider the negative consequences of the proposed Medicaid reforms on Washington's ability to provide vital family planning services to low-income men, women and families to our communities.

"The Network" represents the five Planned Parenthood Affiliates of Washington, providing clinical and education services through 40 Planned Parenthood clinics in 18 counties around the state. In 2004, Washington state Planned Parenthood staff members, interns and volunteers provided approximately 230,000 people with the means to access reproductive health services, physical exams, cancer screening, disease testing and prenatal care. For many of these individuals, family planning is their sole point of entry into Washington's health care system.

If the interim rule is enacted without changes, Washington could lose its ability to provide family planning services to thousands of men and women. Family planning services yield tremendous cost-savings and public health benefits with minimal state financial investment, and it is our strong belief that limiting access to these services under the proposed reforms will only exacerbate public health and budget concerns in the long run.

For example, in Washington, the proposed reforms are expected to:

- Prioritize administrative management of this policy over spending scarce resources on health coverage and direct clinical services;
- Create tens of thousands of new uninsured people who are actually eligible for public programs. This is an enormous step backward for our state, which is in the process of developing innovative ways to cover the uninsured in Washington;
- Possibly remove 80,000-100,000 of Washington's eligible beneficiaries from Medicaid simply because they lack the documentation required to certify eligibility.
- Cost Washington between $5 and $16 million dollars, including the possible hiring of 68 to 250 FTEs.

This provision is unlikely to achieve its intent of removing ineligible non-citizens from the program. In fact, it likely will show that the non-citizen population is largely not enrolled in

Medicaid (it is worth noting that a recent report by the Inspector General of the Department of Health and Human Services found no substantial problem

with fraudulent enrollments). About one in 12 (or 8%) of U.S. born adults 18 or older with incomes less than $25,000 do not have a passport or birth certificate. The reality is that by targeting low-income people, this policy goes after the population least likely to possess necessary documents such as passports and birth certificates.

Previous experience in Washington State tells us that citizens lose coverage when administrative barriers are increased. Implementation of this provision is sure to result in an increase in the rate of uninsured low-income patients.

Citizenship Requirements and Family Planning

We are especially concerned about the impact that the interim final rule will have on individuals seeking family planning services. Nationwide, Medicaid is a significant source of funding for family planning and other preventive health care services we provide to our patients. This critical program is the largest source of public funding for family planning services, accounting for more than 60% of all publicly-funded care.

Access to family planning enables responsible decision making and promotes healthy families. In Washington, publicly funded family planning clinics helped women avoid 31,400 unintended pregnancies in 2004. For many individuals, family planning clinics are the only source of health care and the only place where individuals go to get health education, cancer screening, pre-natal care and disease testing.

For Washington, our Section 1115 waiver (called "Take Charge") is the cornerstone of family planning. "Take Charge" has enjoyed unprecedented enrollments and enthusiastic forecasts about helping the state's low-income residents plan their families and reduce the rate of unintended pregnancies. For example, Washington family planning providers served 164,327 patients through our waiver last year. What this means for the men in women in our communities is that they now have access to the pregnancy prevention, physical exams and cancer screening-- regardless of ability to pay.

The Take Charge program has been overwhelmingly successful. Despite increases in population growth, the program has contributed to a 3.5% decrease in the state's abortion rates and a 2.5% decrease in the state's birth rates. For every dollar spent on Take Charge! Washington saves approximately $3.30 in future care and services.

Recommendations Moving Forward

Individuals receiving benefits under section 1115 family planning demonstration programs should be exempt from the citizenship documentation requirements.

The very point of a family planning waiver is to eliminate as many barriers as possible to the provision of family planning services. The easier that we make it for people to prevent a pregnancy, the more successful we are in preventing the social and financial costs of unintended pregnancies and STDs in Washington. (Note: almost 50% of all births in Washington are paid for by Medicaid).

The interim final rule threatens the viability and impact of our waiver by erecting unnecessary barriers and making it prohibitively difficult for many of our clients to access the pregnancy prevention services that they need. Furthermore, the citizenship documentation requirements force our state to redirect badly needed reimbursements for services to the administration of this rule. The reality is that citizenship verification requirements will only prove what we already know - that the clients served under our waiver are citizens.

We strongly urge CMS to exempt family planning waivers from the documentation requirements in the final rule. Doing so will ensure that we can continue making incredible strides in reducing unintended pregnancies and Medicaid paid births in this state. Without such an exemption, we fear that the administrative costs and burdens associated with implementing this program will override our ability to provide services under the waiver.

Individuals seeking family planning services should receive benefits once they declare citizenship.

Under the DRA, individuals applying to Medicaid will not be eligible for services until citizenship is proven. This is exceptionally problematic for individuals seeking family planning services. Because most of the men and women who come into our clinics are *already* sexually active when they come to us for contraceptive services – asking them to wait days, weeks or even months before we can provide family planning services to them is sure to result in soaring rates of unintended pregnancies and sexually transmitted diseases.

We therefore urge CMS to revise the interim final rule at 42 CFR 435.407(j) to state that new Medicaid applicants who declare they are U.S. citizens or nationals and who meet the state's eligibility criteria must receive Medicaid-covered services while they are obtaining the necessary documentation during the "reasonable opportunity" period.

The final rule should allow states more flexibility to effectively implement the documentation requirements.

Washington State plans to access vital health databases to check for birth certificates. This is a major improvement because some citizens in Washington will not be required to track down their own documentation.

However, there are bound to be many citizens—those not born in Washington, for example – whose verification will not be as easy. Young people, homeless individuals, victims of domestic violence, and Native American or tribal populations are examples of patients that we commonly serve who will also experience disproportionate hurdles to proving their citizenship and receiving services. Again, these are men and women who are looking to us to help them prevent unintended pregnancy and who should not be turned away once they have already overcome sometimes significant barriers to make it to our clinics.

We ask that CMS erect a clear safety net for these kinds of populations who are likely to be negatively and disproportionately affected by these new requirements. Furthermore, CMS should ensure that for these populations, eligibility for services cannot be denied as a result of a state's incapacity to locate the documentation. One such solution might be to not limit the accepted documentation to the primary and secondary level of documents. It is important that CMS accept a variety of documents to reflect the varied circumstances of Medicaid-eligible citizens' lives.

Conclusion

The citizenship documentation requirements set forth by the Deficit Reduction Act will have a profound impact on our ability to provide vital – and cost effective – family planning programs in Washington. We hope that you will implement policies that will lessen the severity of this rule and make it easier – not harder – for men and women to access family planning services in Washington.

Thank you,

Elaine Rose, Executive Director
Amy Luftig, Deputy Director of Public Policy
Planned Parenthood Network of Washington
2001 E Madison St.
Seattle, WA 98122

Planned Parenthood®
of Arkansas and Eastern Oklahoma, Inc.
5780 South Peoria, Tulsa, Oklahoma 74105
918-858-5200

130

August 7, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

To Whom It May Concern:

We in Arkansas and Oklahoma are very distressed about the implementation of the Citizenship requirement for Medicaid eligibility. I know that one of the identified reasons for the horrendous new requirements is to eliminate access of undocumented individuals. However, studies that have been done soundly denounce the idea that undocumented individuals are currently gaining access to Medicaid in any significant numbers. The very small number of such cases does not warrant the enormous cost of the new citizenship requirements. Therefore, we must conclude that there are other reasons for such punitive measures. This legislation is clearly an attempt to keep people out of the Medicaid system thereby reducing the cost of Medicaid. After all this is part of the Deficit Reduction Act.

This act will not reduce costs, but it will shift the costs to the State taxpayers, to health care providers including hospital emergency rooms, to the individual who needs these services. Individuals will put off health care until it is serious enough that they are admitted to the emergency room, or they will begin using the ER as their primary care. As you know this is already happening among the uninsured everywhere in the country. This will increase since more and more individuals will not be able to access Medicaid.

Individuals who are in long term care may not have a birth certificate, etc. or have anyway to find it. College student generally do not have their birth certificates with them, and would be reticent to ask their parents for a copy of it so they can get birth control. Many individuals in Oklahoma and Arkansas were born in rural areas with a family member or lay mid-wife delivering the baby. They frequently did not register the birth. Most people who need Medicaid do not have passports because they could not afford them, and if the could afford them, they couldn't afford to actually use them.

These punitive measures are strong barriers to helping individuals receive care. I am therefore asking you to do everything to reduce, or better yet, eliminate these barriers. I know that you too do not want to keep people out of services, but it is clear that the ones who passed this bill do. Thank you for your help.

Sincerely,

Nancy Kachel

Nancy Kachel
President CEO

Health Services
LOS ANGELES COUNTY

Lawrence Gatton, Chief
Revenue Services
313 N. Figueroa Street, Suite 527
Los Angeles, CA 90012

Tel: (213) 240-8366
Fax: (213) 482-9179

www.lgatton@ladhs.org

August 10, 2006

VIA E-MAIL
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

To Whom It May Concern:

We have reviewed the CMS interim final rules in the Federal Register 42 CFR Part 435, 436, 440, 441, 457, and 483 – CMS-2257-IFC Medicaid Program; Citizenship Documentation Requirements and have the following questions:

1) Page 39216 states "States, at their option, may use matches with the SDX (if the State does not provide automatic Medicaid eligibility to SSI recipients) or vital statistics agencies in place of a birth certificate to assist applicants or recipients to meet the requirements of the law."

   Question: Since documentation verifying citizenship only needs to be provided once, if a patient previously had SSI coverage, and is now applying for Medi-Cal, may we use the SDX as verification of citizenship and if so, how far back can we go?

2) Page 39219 states "We specify in paragraph (i) that once a person's citizenship is documented and recorded in the individual's permanent case file, subsequent changes in eligibility should not ordinarily require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship, or there is a gap of more than 3 years between the individual's last period of eligibility and a subsequent application for Medicaid."

   Question: As long as documents providing verification of citizenship are retained beyond 3 years, is it necessary for an applicant to provide verification of citizenship if applying for Medi-Cal after 3 years?

3) Page 39220 states "We are removing § 435.408 and § 436.408 because the immigration status described as permanently residing in the United States under color of law no longer has any effectiveness because of the enactment of 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act which provides that "notwithstanding any other law" an alien who is not a qualified alien

as defined in 42 USC 1641 is not eligible for any Federal public benefit." Underline added above for emphasis.

Question: Is this statement regarding Immigration Reform and Control Act (IRCA) only or Persons Residing Under Color of Law (PRUCOL) in general?

4) The document fails to address citizenship verification for infants born in a hospital in the United States on or after July 1, 2006.

Question: Shouldn't infants born in a hospital in the United States on or after July 1, 2006 be added to the exempt population?

We have tried not to duplicate comments that National Association of Public Hospitals and California Association of Public Hospitals have provided separately to you.

If you have questions or require additional information, please call me at (213) 240-8366.

Respectfully,

Lawrence Gatton, Chief
Revenue Services

LG:mj (1MARYJ\Medi-Cal\DRA 0806-comments.doc)

c: Pat Adams
John R. Cochran
JoAnn Dave
Jonathan Freedman
Gary W. Wells

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

132

CLAUDETTE J. BEAULIEU
Deputy Commissioner

• TELEPHONE
(860) 424-5004

TDD/TTY
1-800-842-4524

FAX
(860) 424-4899

August 10, 2006

The Honorable Mark McClellan
Assistant Secretary
Centers on Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Re: CMS-2257-IFC

Dear Assistant Secretary McClellan:

I am writing to provide comments on interim final rules concerning the **Medicaid Program: Citizenship Documentation Requirements** published in the Federal Register on July 12, 2006. (These comments have also been submitted electronically.) The Department of Social Services is the Medicaid single state agency in Connecticut and has implemented these new requirements consistent with the initial State Medicaid Director guidance and these interim rules.

We want to acknowledge and thank you for improvements in the interim final rule such as the exemption of SSI and Medicare recipients from the verification requirement as Congress clearly intended. We also appreciate the change made to allow us to use data matches with vital records agencies as a secondary level verification source for citizenship.

At the same time, this has been an extremely difficult and burdensome implementation effort, exacerbated by the constant changes in interpretation of the Deficit Reduction Act citizenship verification provisions as reflected in the various documents issued by your agency and through the numerous conference calls on the subject. Although we appreciate your agency's efforts to make yourselves available to respond to questions and concerns raised by the states in interpreting your guidance and rules, we believe it would have been wise to delay the implementation effective date to allow more time for these concerns and issues to be addressed and for states to put in place the necessary systems to effectively apply these new rules. The manner in which direction was given has generated a great deal of confusion and has almost certainly resulted in eligibility staff making errors in applying the new rules. In light of this we urge you to hold all states harmless from any penalties that might be applied as a result of any errors made during the first six months of implementation (January 2007).

In general, we believe the rule is too prescriptive in limiting the types of documents that are acceptable to prove citizenship and identity. The specific omission of religious documents, such as baptismal certificates, is especially troubling. Medicaid claims

history for newborns should also be acceptable documentation of citizenship. In addition, the list of acceptable identity documents is too narrow. Many low income individuals do not have driver's licenses, essentially requiring that they incur the cost and undergo the burden of securing a state identification card from the Department of Motor Vehicles in order to meet the identity requirement. We ask that you include other forms of identification, such as employer ID's. You should also permit the Medicaid agency to consider the requirement met if the client submits documents equivalent to those that would be required to secure a state identification card, without actually having to have them incur the expense of securing a card.

We also want to express appreciation for interpretations we have received in conference calls and in meetings with Center for Medicaid and State Operations Director Dennis Smith and other CMS staff concerning the treatment of foster care children as recipients, allowing us to provide immediate medical assistance to such children prior to verifying citizenship, and in permitting certain newborn children to postpone verification for one year. We would like to see the foster care exemption addressed in the final rule or in other formal CMS guidance.

Please note that any such exemption should apply to all foster care children upon initial placement. Because it takes the state child welfare agency from sixty to ninety days to complete a IV-E eligibility determination following initial placement, IV-E status is not immediately known. However it is critical that such children have immediate Medicaid coverage. For Medicaid purposes they should be presumed to be IV-E eligible during this initial determination period during which time the child welfare agency normally secures an original birth certificate that is then provided to us to verify citizenship.

Regarding newborn children, we are very concerned that there are other newborn children, those not born to a Medicaid recipient, whose Medicaid eligibility will be delayed due to the citizenship verification requirement, resulting in an inability to access critical care during the first few weeks of life. These are most often children born to Medicaid ineligible non-citizen parents. Securing hospital records or birth certificates for these children can take several weeks. The interim rule at 435.407(c)(1), depending upon how it is interpreted, may foreclose a viable citizenship verification option for these children. If the phrase "extract of a hospital record" means a hospital medical record then this will lead to delays in securing such documents because of the time it takes for hospitals to transcribe the original records and make them available to outside parties. If it can include a notification of birth from a hospital official, which is our current practice in Connecticut, then the verification process can be expedited and these newborn children assured of the essential care that they require. We've enclosed a copy of our Notification of Newborn form that we have recently revised to provide space for hospitals to produce this document on their letterhead. These forms should be acceptable proof of citizenship under the hospital record extract criteria. We would like to see this matter addressed either in the final rule or in other documentary guidance from your agency. (See my comment above.)

In addition to the above-suggested change concerning newborn children we have the following specific comments:

1. We object to the requirement that only original documents or certified copies of documents be acceptable. This creates an unreasonable burden on Medicaid applicants and recipients as well as the state agencies by effectively requiring

that the applicant/recipient bring the documents to the state office to be seen and copied or scanned. In Connecticut we do not require face-to-face interviews for Medicaid. This requirement creates an obstacle to program access for Medicaid applicants who have difficulty providing documents in this manner because of age, disability, work schedules and lack of transportation. It also, especially during the initial year of implementation when all current recipients will need to submit documents, creates an overwhelming operational problem for our local regional offices, which must deal with the tremendous increase in client flow through our office reception areas. Mailing documents such as passports, naturalization papers or drivers licenses is not a feasible or reasonable alternative for most clients. Medicaid clients will not want to take the risk of having such valuable documents lost or misplaced through the mail. We have examined our quality control data for the last seven years and have not found any instances of a client misrepresenting their citizenship status. The risk of accepting copies of documents is therefore extremely low when weighed against the administrative burden that original document submittal creates. We urge you to reconsider this requirement and permit the submittal of copies of the documents. We can use subsequent data matches to confirm the authenticity of these documents and identify the rare instances of fraudulent documents if indeed there are any.

2. At the APHSA Summer Meeting in Washington D.C. on July 11, 2006, Dennis Smith was asked if state agencies could delegate the responsibility for viewing the original documents to agencies or providers that are under contract or other formal agreement with the state to assist Medicaid applicants with the application process. Examples in Connecticut include our contracts with our community action agencies for Human Services Infrastructure, our Healthy Start contracts with FQHCs, a formal agreement with our child welfare agency for foster care and adoptive children, and our Qualified Entity agreements with community agencies and providers for Presumptive Eligibility for Children. Mr. Smith responded that such an arrangement would be acceptable. We appreciate this interpretation and would like to see it addressed in the final regulations or in other formal guidance on this subject.

3. The interim rule requires that state agencies copy Certificates of Naturalization as acceptable documentation. It is a felony under Federal law (18 USC 1426(h)) with severe civil and criminal penalties to copy this document. The final rule must address this issue, either by exempting this document from the requirement to have a copy placed in the case record or by HHS/CMS securing a specific waiver from the Department of Homeland Security that will permit the copying of naturalization documents for purposes of Medicaid citizenship verification. In the interim we have advised our staff not to violate the federal law and to narrate in the case record a description of the naturalization document.

4. During a question and answer session at the National Association of State Medicaid Director's meeting in San Francisco recently, Mr. Smith was asked about how to determine whether a document is available before accepting a lower level document. In particular he was asked: If the Medicaid client did not possess the document and could only secure it by paying a fee, could the document be considered unavailable? His response was that the document could be considered unavailable. We would like to see the final rule or federal

guidance that confirms this statement by indicating that a document is unavailable if it is not in the applicant's or recipient's possession, it can only be secured by paying a fee, and the applicant or recipient is unable or unwilling to pay such fee. Medicaid applicants and recipients are by definition low income individuals. They must make difficult choices every day concerning what to spend their limited resources on. In the cases of some families, purchasing birth certificates for multiple family members can be so costly as to put the family at risk of not having basic necessities. In light of this Mr. Smith's answer was the correct one.

5. Section 435.407(f) speaks to special rules for children under 16. Although there is a reference to school records, including nursery or daycare records, there is no primary listing of documents acceptable for such children including school records as an acceptable identity document, other than school identification with a photograph. We're uncertain if not providing this list of documents was an error or oversight. For younger children at the pre-secondary level, school identifications are not available. Other school records, including report cards, should be acceptable to establish the identity of a child as should medical records and Amber Alert ID's provided by law enforcement officials. We encourage you to expand upon the types of documents acceptable for children.

6. In one of your staff's conference calls with the states clarification was provided that the affidavits that may be submitted for citizenship verification and for children's identity do not have to be notarized. We would like to see this interpretation reflected in the final rule or in other formal guidance on this subject, as this is not consistent with the normal interpretation of what is an affidavit.

7. On page 39216 there is a statement that "States may also, at their option, use matches with State vital statistics agencies in place of birth certificates to establish citizenship." We very much appreciate this provision, as we believe this is probably the most cost-effective approach to verifying citizenship and we are working with our state vital records administrator to establish an automated match with our Medicaid records. We were also informed in response to a question raised at the aforementioned APHSA meeting that such matches can include manual matches of birth certificate information. We have developed a process to submit a manual form with the information we have on file to the state vital records administrator and she has agreed to verify the information so submitted. (Form attached.) We were told that this is an acceptable data match process and would like to see this interpretation reflected in the final rule or in other formal CMS guidance on this subject.

8. There will be a small number of applicants or recipients who will not be able to submit documentary evidence of citizenship or identity because the records do not exist and there do not exist two living individuals with personal knowledge of the events establishing the applicant's or recipient's claim of citizenship. Because of the exemptions for Medicare and SSI recipients we believe the number of such individuals will be very small. In light of this we believe it would not be overly burdensome for CMS to have an exception process whereby the State Medicaid agency could request CMS regional office review and approval of citizenship status based on other evidence that the state would submit relative to

the citizenship claim. We recommend that an exception approval process be included in the final rule.

9. The statute requires that your department undertake outreach activities concerning these citizenship verification requirements. Your agency has chosen to delegate this responsibility to the state and has agreed to make federal matching funds available at the normal FFP rate. Since the statute clearly makes this outreach activity the responsibility of your agency any costs incurred by the states as a result of your delegation of this responsibility should be fully funded by the federal government.

Thank you for providing us with the opportunity to comment on the interim final rules. Please contact Kevin Loveland, Director of Assistance Programs, at 860-424-5031 or kevin.Loveland@po.state.ct.us if you have any questions about these comments.

Sincerely,

Claudette J. Beaulieu
Deputy Commissioner

CJB:kl

cc. Patricia A. Wilson-Coker, Commissioner
Michael P. Starkowski, Deputy Commissioner
Kevin Loveland
David Parrella

(Hospital Letterhead Goes Here)

W-416
(Rev. 7/06)

NOTIFICATION OF NEWBORN

TO: THE DEPARTMENT OF SOCIAL SERVICES

I certify that _____ (☐ *boy,* ☐ *girl)* was born at this hospital on _____ to
(Baby's Name) *(check one)* *(Date)*

Name of Recipient _____

Date of Birth of Recipient _____

Recipient Social Security Number _____

Recipient Client ID _____

Address of Recipient _____

Active Medicaid Recipient? ☐ Yes ☐ No

_____

Child Released to Mother ☐ Yes ☐ No

_____

Child Remains Hospitalized ☐ Yes ☐ No

I also certify that the recipient ☐ Has, ☐ Has not *(check one)* applied for a Social Security Number for the newborn through the enumeration at birth process.

_____ _____ _____
Signature of Hospital Official *Title* *Date*

_____ _____ _____
Printed Name of Hospital Official *Telephone #* *Hospital Fax #:*

FAX TO: **860-424-5678 or 860-424-5679**
Department of Social Services
Central Processing Unit, 7th Floor
25 Sigourney Street
Hartford, CT 06106-5033

(To be completed by DSS)

NEWBORN CLIENT ID # _____
(Assigned by DSS)

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

W-1010
(New 7/06)

Verification of Birth Information

State of Connecticut
Department of Public Health
Vital Records Unit
450 Capitol Ave.
Hartford, CT 06106

Date:_____

HOH Name:_____

HOH Client ID:_____

To whom it may concern:

The Department of Social Services is required to verify citizenship for each of our applicants and recipients. The information below is what we have on record for this individual. Please verify that this information matches the birth certificate you have on record, check the appropriate box below, and sign in the space provided. Any discrepancy should be noted in the space provided at the bottom of this form. Thank you for your assistance.

_____ DSS Worker Name

_____ DSS Office

_____ Phone Number

_____ DSS Office Address

SECTION I - To be completed by DSS worker:

_____ Birth Certificate State File Number (if applicable)

_____ Name on Birth Certificate

_____ Date of Birth

_____ City/Town of Birth

_____ Gender

_____ Mother's Name

_____ Mother's Social Security Number (for births after 1987)

_____ Mother's Maiden Name

_____ Father's Name

_____ Father's Social Security Number (for births after 1987)

SECTION II - To be completed by Department of Public Health (DPH) worker:

1. ☐ The information above has been compared to the birth certificate on file at the Department of Public Health Vital Records office and has been verified as matching the information in DPH records.

3. ☐ The information above does not match the birth certificate in DPH records because:

_____

_____ Signature of DPH Worker

_____ Date

_____ Printed Name of DPH Worker

_____ Phone Number

133

State of New Jersey
DEPARTMENT OF CHILDREN AND FAMILIES
PO Box 729
TRENTON, NJ 08625-0729

JON S. CORZINE
Governor

KEVIN M. RYAN
Commissioner

August 10, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

I am writing to provide comments regarding the Interim Final Rule that was published in the July 12, 2006, edition of the Federal Register, which amended Medicaid citizenship verification regulations in order to implement the provisions of the Deficit Reduction Act of 2005.

The rulemaking, in part, specifies that Title IV-E children receiving Medicaid shall now submit a declaration of citizenship or other satisfactory immigration status, along with supportive documentation of such citizenship or satisfactory immigration status.

New Jersey's child welfare policy has always required verification of citizenship and lawful alien status for children receiving Medicaid while in out-of-home placement. However, it is the experience of my Department that there are frequent difficulties in obtaining this documentation because the natural birth parents are either unable or unavailable to provide these documents, or we are unable to obtain information to assist us in identifying the child's place of birth. In lieu of such documentation, we had previously accepted either documentation of an eligibility determination made by another agency, such as a county welfare or Social Security record or, failing that, a parent's verbal statement as proof of eligibility. The interim rule now prohibits this practice.

According to the rule, we are no longer entitled to confer Medicaid eligibility to children in our care or custody until we have secured the documentation of citizenship described in the July 12 regulation. Because in some cases we may never be able to secure the required citizenship documentation, these children may have their continued Medicaid coverage jeopardized. I believe that this is inconsistent with the Federal government's goal of ensuring the safety and well-being of this population of vulnerable children, many of whom are medically fragile. Although some of our children will be eligible for state-funded medical coverage, the fiscal

State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Helene Nelson, Secretary

134

August 11, 2006

Mark B. McClellan, M.D., Ph.D
Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attn: CMS 2257-IFC
Mail Stop C4-26-05
7500 Security Blvd
Baltimore, MD 21244-1850

Dear Dr. McClellan:

The Wisconsin Department of Health and Family Services respectfully submits the attached comments regarding the Medicaid Citizenship Documentation Requirements. The comments are specifically in response to the interim final rule published on July 12, 2006, in the Federal Register (71 FR 39214).

Over the last few months we have been engaged in discussions with the Centers for Medicare & Medicaid Services (CMS) and other states regarding the citizenship and identity documentation provisions of the 2005 Deficit Reduction Act (DRA). We have appreciated the opportunity to work with CMS in reviewing and analyzing the interim final rule and associated implementation issues. Wisconsin is being diligent in its implementation of the new provisions as outlined in the interim final rule.

The Department is committed to maintaining health care benefits for people who meet the Medicaid eligibility criteria as described in state and federal law. As such, we have proceeded as quickly as possible to implement the DRA Citizenship Documentation requirements with the least amount of disruption for Wisconsin residents.

During the implementation process, however, we have identified some concerns with the interim final rule which we have commented on in the attached document. Overall, we feel the interim final rule has more stringent requirements than were included in the original law. Our comments reflect the specific elements where more flexibility could be afforded. As such, we request that some of the details of the provision be amended in order to reduce the burden of the requirement on Medicaid applicants and recipients, as well as on the states and local agencies that need to implement these requirements.

Thank you for taking our comments into consideration as you draft the final rule. Wisconsin looks forward to working with you in the coming weeks with the release of the final rule.

Sincerely,

Helene Nelson JAH

Helene Nelson
Secretary

Attachment

Reference file code: CMS-2257-IFC

Section I: Background-Implementation Conditions/Considerations

Foster Children and SSDI Recipients

Section I discusses the exemption for Medicare and Supplemental Security Income (SSI) recipients as a result of the drafting error in the law which is a welcome clarification.

We note that the regulation does subject Title IV-E children receiving Medicaid and Social Security Disability Insurance (SSDI) recipients to the requirements. We believe anyone who is receiving Social Security Disability Insurance (SSDI) payments should also be exempted. Most of these beneficiaries will become entitled to Medicare 24 months after their disability onset date. The application process for SSDI is identical to that for SSI and, as such, the SSDI population should be treated the same as SSI recipients with regard to the exemption. In addition, all foster children should be exempted from the citizenship and identity documentation requirements. Since Title IV-E children are at a particular disadvantage due to their disrupted home life, we believe this requirement places an undue hardship on them.

If Title IV-E children are to remain subject to the requirements in the final regulation, we request that CMS include in the regulation that Title IV-E children be treated as recipients, not applicants for the purposes of the requirement. (The CMS Medicaid Program Director and staff have publicly stated that this is CMS' policy during several conference calls and at a National Association of State Medicaid Directors' meeting). This would allow Medicaid eligibility to be granted while the Title IV-E child was in the process of securing the necessary documentation.

Deemed Newborns

In accordance with the Social Security Act §1902, §1903(v), and 42 U.S.C. §1396(e), an infant born to a non-citizen pregnant mother whose labor and delivery are covered by Medicaid is born to a woman eligible for and receiving medical assistance (emergency services) under a State plan. Therefore, we request that these infants be deemed eligible for Medicaid for a period of one year before being subject to the citizenship requirement.

Reasonable Opportunity Period

We request that Medicaid applicants who declare their U.S. citizenship be afforded the same consideration as applicants who declare they are immigrants. To the extent that we are required under federal law [42 U.S.C. §1320b-7(d)(4)(A)] to make immigrants eligible for Medicaid and to provide them with a reasonable opportunity period to submit satisfactory immigration information, states should also be permitted to provide individuals who declare they are citizens with eligibility during the reasonable opportunity period while they obtain the required documentation. We further request that states be eligible to receive Federal Financial Participation (FFP) for providing services to such individuals during this time period.

impact of the loss of federally-funded medical assistance will undoubtedly affect our ability to provide other vital supportive services to these children and their families.

On behalf of the children in our care or custody, I strongly urge you to exempt children who are in foster care, an independent living arrangement, or subsidized adoption from the burdensome Medicaid citizenship verification requirements that were defined in the interim rulemaking.

Thank you for the opportunity to provide comments on this important issue.

Sincerely,

Kevin M. Ryan
Commissioner

KMR/2D

Data Exchanges

We ask that CMS expand the definition of allowable data exchange matches in the regulation to allow states to pursue data exchange matches with other state government agencies for purposes of proof of citizenship and identity, including:

- *Department of Veterans Affairs (DVA).* An exchange with a trusted source such as the DVA could be helpful in securing citizenship or identity proof for individuals who have served in the armed forces and have no other documentation.

- *Public Assistance Recipient Information System (PARIS).* An exchange with a trusted source such as PARIS would allow states to perform inter-state matches to verify citizenship proof that exists in another state.

- *Social Security Administration (SSA) Data.* Additionally, we ask for clarification from CMS regarding the use of SSA data for the purposes of proof of identity. While the regulation discusses the state option to use data exchanges with other state and federal government agencies, SSA is not mentioned. Wisconsin assumes that SSA is considered to be a trusted source for identity proof, given that SSA establishes the identity of every applicant for a social security number as part of its routine administrative processes.

Section II: Provisions of the Interim Final Rule With Comment Period

Additional Identity Documentation

For identity documentation, we request that CMS allow states to collect the following documents in addition to the existing list that is allowed to document identity:

- immunization records
- court orders
- voter registration cards

Additionally the following documents are accepted by the Wisconsin Department of Transportation-Division of Motor Vehicles for the purposes of securing a driver license, which is listed as acceptable documentation of identity in the interim final regulations. The following documents should also be considered reliable documentation of identity that could be used to fulfill the identity documentation requirement.

- Military discharge papers
- International Driver License
- Certified copy of a marriage certificate or judgment of divorce
- Employee photo identification card issued by the current employer, containing the employer's name and address
- Social security card issued by Social Security Administration

Additional Citizenship Documentation

For citizenship documentation, we request that CMS allow states to use the following to document citizenship, in addition to those items on the existing list:

- Medicaid paid claims for the birth of a child. The child's citizenship is clear. He or she was born in Wisconsin, since Medicaid paid a Wisconsin hospital or midwife for the services delivered associated with the child's birth. We believe that this represents clear evidence that the child was born in Wisconsin and is therefore a U.S. citizen.

- Tribal enrollment records and other tribal documents that show place of U.S. birth. These are accurate and reliable forms of documentation that should be able to be used to fulfill the requirements of the citizenship provision. Some Native Americans have been born at home and may not have the customary documentation of citizenship that non-Native Americans possess.

Preponderance of Evidence

States should be allowed to use their best judgment with regard to whether any given document meets or does not meet the requirement. In situations where an individual simply does not have any of the acceptable documents as defined in the federal regulations, states must be allowed to assess other forms of documentation and make determinations based on a preponderance of the evidence provided as to whether the requirement has been met.

Affidavits for Citizenship and Identity

While the regulation allows for the use of an affidavit to document citizenship, the related requirements render it impractical to obtain. We request that CMS consider easing the following:

- The requirement that two persons need to acknowledge the event that determined citizenship;
- The requirement that both of the persons signing also need to prove their citizenship; and,
- The requirement that there must be a separate affidavit attesting to the reason(s) the applicant/recipient cannot secure other documentation.

The new requirement could have a negative impact on confidentiality and participation relative to Wisconsin's Family Planning Waiver program. The interim regulations require that an affidavit attesting to a child's identity be signed by the child's parent or guardian. However, fifteen year olds receiving family planning waiver services, who are unable to document their identity in any other way, may be very reluctant to divulge their participation in this program to their parents for the purpose of securing a signed affidavit. They may instead choose to end their participation. As such, we recommend that the regulations be relaxed to require only that the child's affidavit be signed only by an adult. This is clearly a case where the purpose of the program, reducing the number of unwanted pregnancies (particularly teen pregnancies) and sexually transmitted

diseases, be considered in applying the citizenship and identity documentation requirement.

We further request that, in addition to children under age 16, states be allowed to use an identity affidavit for adults in certain limited circumstances.

Children Born Overseas and Adopted by U.S. Citizens

We request further clarification for children born overseas who are adopted by U.S. citizens. It is unclear as to whether these children will not be eligible until the child gets a certificate of naturalization or a certificate of citizenship. We recommend that these children be made eligible immediately upon adoption.

Documentation Hierarchy

We request that CMS remove the requirement to strictly follow the hierarchy of reliability included in the regulations. States need flexibility to assess whatever is presented by the individual with regard to its legitimacy relative to meeting the requirements. Further, federal law does not require the implementation of any such hierarchy of acceptable documentation.

Five Year Requirement

The rule requires that certain types of level three and four documentation be created at least five years prior to the application for Medicaid to be considered acceptable. This is unnecessarily burdensome and will be very difficult to determine in any case. It is not clear why a document created at least five years prior to the Medicaid application is considered more reliable than a document created at a more recent time. We request that CMS remove the five year requirement.

Section III: Collection of Information Requirements

Time Estimate

CMS' current estimate of time for states/agencies to record the receipt of documentation is close to Wisconsin's own estimate (fifteen minutes), however the estimate for beneficiaries would appear to be much longer than the ten minute timeframe described in the regulation. In many cases, individuals will need to apply for documentation from state or federal agencies which could entail much paperwork, standing in lines waiting, retrieval of documents, etc. This could be a prolonged process lasting several weeks. The timeframe will prove to be even lengthier if an individual needs to contact agencies in states they are no longer living in.

Original Documents

In recent years the states and the federal government have worked together to move to a paperless system and streamline the process to apply for public assistance programs. As a result, the Wisconsin Medicaid program has both mail-in and online application processes which do not require a face-to-face interview. We request that if the state can

assure that the information received about an individual's identity and citizenship is accurate that photocopies will be allowed as sufficient documentation.

To minimize the information collection burden on applicants, recipients and workers, we request that CMS acknowledge and implement Wisconsin's suggestions above in the comments on Section II.

Section VI: Regulatory Impact Statement

The comment that there is no extra burden on the eligibility process for states and the local agencies determining eligibility is not accurate. Wisconsin has already been dealing with several questions and situations arising in the agencies as a result of the citizenship requirement. The local agencies indeed have expended time and energy in the implementation of the requirement and will continue to do so as it is rolled out over the next few months. Specifically, their duties include:

- The review of all communication and training materials related to the provision;
- The implementation in their local agency business process of the new policies and processes;
- Communication of the provisions to applicants and recipients in a timely and accurate manner;
- Providing assistance to those applicants and recipients who ask for help in securing documentation;
- Consultation with the state policy and process expert on outstanding questions and issues that arise; and,
- The receipt and recording of documentation.

Richland County Children Services
731 Scholl Road, Mansfield, Ohio 44907-1571 • Phone (419) 774-4100 • FAX (419) 774-4114 • www.richlandcountychildrenservices.org

135

July 31, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

RE: Medicaid Citizenship Documentation
Interim Final Rule, 71 Fed. Reg. 39214 (July 12, 2006)

Richland County Children Services Board (RCCSB) is one of eighty-eight public child protection agencies in Ohio working to protect children from abuse, neglect and dependency. As Executive Director of RCCSB, and on behalf of the children this Agency represents, I am very concerned as related to the interim final rule on Medicaid Citizenship Documentation. My concern is due to the unnecessary new documentation requirement for Medicaid eligible foster children. The documentation requirement will directly affect the provision of health care to children in which this Agency, and many like it nationwide, represents.

It is in the best interest of children involved in the public child welfare system to ensure efficient and effective medical treatment and delaying Medicaid coverage due to documentation requirements of the Medicaid Citizenship rule is not the answer. The result of delayed preventive medical care often results in emergent need for medical treatment. It is important to point out that the cost of emergency care will always supersede the cost of preventive care. Not to mention the physical pain and harm to children caused by delayed treatment due to lack of medical coverage.

Current Title IV-E regulations require verification on citizenship status of foster care children as part of the determination of their eligibility for Title IV-E payments. The Deficit Reduction Act provides exemption to populations in which verification has already occurred. Adding additional documentation requirements creates barriers to service provision for children in foster care system and will pose risk to them due to delayed medical treatment.

The emergent nature of placement of children into the foster care system often comes with lack of cooperation from the parent/guardian. This lack of cooperation is a barrier to obtaining an original or certified copy of a birth certificate. Copies of birth certificates are more easily obtained and should be an acceptable for of documentation. Requiring proof of identity for foster children, in addition to proof of citizenship, is idealistic. In the majority of situations children do not have access to documentation required under this rule. These are, in some cases, children that are fortunate to leave their homes with their lives. The concern in these emergent situations is safety of the child and not obtaining a form of identification. Additionally, situations like this do not rise to an opportunity to obtain such documentation from hostile parents.

RCCSB joins other local, state and national groups in there opposition to the new Medicaid citizenship documentation requirements as it applies to foster children. On behalf of the children represented by public child welfare agencies RCCSB asks for support and for exempting foster children from the new requirements. Additionally, RCCSB supports Public Children Services Association of Ohio on it's stance that "Children who are eligible for federal foster care payments should be exempt from the new citizenship documentation requirements".

Sincerely,
Richland County Children Services Board

Randy J. Parker, Executive Director

08/14/06 15:50 FAX 540 857 2080

Treat as an original

136

BOB GOODLATTE
6TH DISTRICT, VIRGINIA
2240 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4606
(202) 225-5431
FAX (202) 225-9681
www.house.gov/goodlatte

DEPUTY MAJORITY WHIP

CHAIRMAN, HOUSE REPUBLICAN HIGH TECHNOLOGY WORKING GROUP

CO-CHAIR, CONGRESSIONAL INTERNET CAUCUS

Congress of the United States
House of Representatives

COMMITTEE ON AGRICULTURE
CHAIRMAN

COMMITTEE ON THE JUDICIARY

VICE-CHAIRMAN, SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

REPUBLICAN POLICY COMMITTEE

August 14, 2006

Ms. Carleen Talley
Director, Congressional Affairs Group
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue,SW, Room 341 H
Washington, D.C. 20201

Dear Ms. Talley:

Enclosed please find a letter that I have received from my constituent, Robin Haldiman, regarding the Medicaid Citizenship Documentation Interim Final Rule.

I would appreciate your looking into this matter and providing me with a response for my constituent. Please mail your response to my Roanoke office at the address marked below.

Thank you for your assistance.

With kind regards.

Very truly yours,

Bob Goodlatte
Member of Congress

RWG:lb

2006 AUG 15 AM 10:16

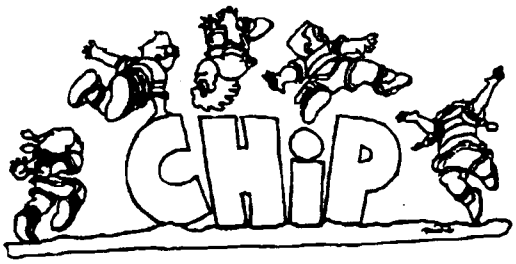
597987
AUG 17 2006
11:49 AM

☐ 2 SOUTH MAIN STREET
SUITE A, FIRST FLOOR
HARRISONBURG, VA 22801-3707
(540) 432-2391
FAX (540) 432-6693

☐ 916 MAIN STREET
SUITE 300
LYNCHBURG, VA 24504-1608
(434) 845-8306
FAX (434) 845-8245

☐ 10 FRANKLIN ROAD, S.E.
SUITE 540
ROANOKE, VA 24011-2121
(540) 857-2672
FAX (540) 857-2675

☐ 7 COURT SQUARE
STAUNTON, VA 24401-3307
(540) 885-3861
FAX (540) 885-3930



CHILD HEALTH INVESTMENT PARTNERSHIP OF ROANOKE VALLEY

July 31, 2006

The Honorable Bob Goodlatte
United States House of Representatives
2240 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Goodlatte,

I am the Executive Director of Child Health Investment Partnership of Roanoke (CHIP of Roanoke Valley). Over the past four years, CHIP has helped to enroll almost 2,000 children in the Roanoke Valley in Medicaid. I am deeply concerned that the Medicaid Citizenship Documentation Interim Final Rule, 71 Fed. Reg. 39214, section 6036, could effectively eliminate coverage for up to 1.5 million children who are U.S. citizens. The requirement to prove citizenship and identity prohibits states from granting coverage to eligible citizens until they can obtain original documents such as birth certificates and photo IDs for their child. While negotiating with our local Department of Social Services about the best way to handle applications for CHIP enrolled clients, the eligibility worker just laughed and stated that "the new requirements to submit AND view original documents are so overwhelming, that we have not been able to complete ANY applications because we are waiting for birth verifications. We are already so backed up, it's ridiculous." The resulting delays in obtaining Medicaid coverage for huge numbers of eligible children and low-income pregnant women will cost our health care system and economy far more than providing health care coverage once they simply declare they are citizens and meet all eligibility requirements.

Throughout our years of Medicaid enrollment experience, CHIP has never had an incident where the Eligibility Worker was concerned about a family "faking" citizenship to get Medicaid. In fact, children born in the U.S. to illegal parents are easier to document because they ARE born here and have the required proof of legal status. Among the children CHIP has assisted locally are babies waiting for coverage to obtain heart surgery, small children needing hearing aids, and a child waiting for the removal of a tumor. The real-world health and economic consequences of delaying Medicaid coverage is daunting. Parents will become too angry and frustrated to follow-though

1201 Third Street, SW • Roanoke, Virginia 24016 • Phone: (540) 857-6993 • Fax: (540) 857-6999
Website: www.chipofroanokevalley.org • Email: chip@roanokemail.com

with the applications, which will in turn create the absence of preventive care including immunizations for children, as well as increased emergency room usage for chronic and acute conditions easily managed by a primary care provider. We will be adding hundreds of thousands of children to the increasing amounts of uncompensated care already provided to uninsured adults. Carilion Medical Center (which includes Roanoke Memorial and Community Hospitals in Roanoke Virginia) incurred $44,153,000 in uncompensated charity care in 2005. Within Carilion Health System in the region, there was $61,103,000 in uncompensated charity care in 2005. These numbers do not include bad debt write-offs, but reflect only charity care.

I urge CMS to revise the regulation by modifying the requirement listed in 42 CFR 435.407(h)(1) to make it clear that a state has the option of *accepting copies* of documents *in lieu of original documents* or *copies certified* by the issuing state agency. Most states do not require a face-to-face interview for children and parents applying for or renewing their Medicaid coverage. Mail-in applications are more efficient for both the family and the state Medicaid agency. This requirement goes beyond the requirements that Congress imposed in the DRA and will in most cases, discourage applicants from completing the application process. The result: Children and families will go without coverage, the numbers of uninsured will increase, and providers will not get reimbursed-which drives up the cost of health care for ALL Americans.

Sincerely,

Robin Haldiman
Executive Director

10 Franklin Road, S.E.
Suite 540
Roanoke, Virginia 24011
540-857-2672
540-857-2675 FAX
e-mail: Lindsay.Brooks@mail.house.gov

Congressman Bob Goodlatte
Sixth District of Virginia

Fax

To: Ms. Carleen Talley **From:** Lindsay Brooks, District Representative

Fax: 202/690-8168 **Pages:** 3

Phone: **Date:** 08/14/2006

Re: Medicaid Citizenship requirements **CC:**

XXXXX **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

☐ **Please Recycle**

137

STATE OF CONNECTICUT
HOUSE OF REPRESENTATIVES
HARTFORD, CONNECTICUT 06106-1591

JAMES A. AMANN
SPEAKER OF THE HOUSE

August 9, 2006

Michael O. Leavitt
Secretary, United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: Medicaid Citizenship Documentation Interim Final Rule, 71 Fed.Reg. 39214 (July 12, 2006)

Dear Secretary Leavitt:

I would like to express my comments on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

As Connecticut Speaker of the House of Representatives, my goal along with many other state leaders has been to simplify the eligibility process and expand access to health care coverage. These new regulations will result in just the opposite.

Connecticut's Department of Social Services conducted an audit of a sample of Connecticut Medicaid cases and did not find one single case of an applicant falsely declaring citizenship. As you know your Department of Health and Human Services published a report that found no substantial evidence of falsely declaring citizenship a problem.

I am encouraged that the interim final rule contains a number of provisions that will ease implementation of the Medicaid documentation requirement for some citizens. I remain concerned, however, that the final rule goes beyond what Congress intended and will have a harmful impact on pregnant women and children, especially children in state foster care programs, who are citizens of the United States. Therefore, I am recommending revisions in three areas to ensure that eligible pregnant women, parents, children and persons with disabilities can receive Medicaid benefits without experiencing delays, disruptions or denials of coverage.

The preamble to the rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. This prohibition on granting coverage to applicants for Medicaid until they provide documentation of their citizenship will delay Medicaid coverage for large numbers of eligible, low-income pregnant women and children. These delays in coverage are of special concern for pregnant women, because they could hinder their ability to get timely prenatal care. Coverage will also be delayed for individuals attempting to enroll in state family planning waivers, creating an unnecessary barrier to women seeking family planning services.

Congress did not make documentation of citizenship a condition of receiving Medicaid benefits. When applicants show that they meet all eligibility criteria and make a sworn declaration of citizenship, they should receive benefits while they get the documents they need. This is the rule for legal non-citizens whose legal status makes them eligible for Medicaid, and the same rule should be applied to citizens.

I urge you to revise 42 CFR 435.407(j) to allow applicants who declare they are U.S. citizens or nationals and who have shown that they meet the state's Medicaid eligibility criteria to receive Medicaid coverage while they obtain the documents they need to meet the new requirement.

The interim final rule applies the DRA citizenship documentation requirements to *all* U.S. citizen children except those eligible for Medicaid based on their receipt of SSI benefits. About one million children in state foster care programs, including children receiving federal foster care assistance under Title IV-E, are subject to the citizenship documentation requirement. This includes about 7000 children in foster care programs in Connecticut alone.

State child welfare agencies must verify the citizenship status of children in their foster care programs to determine their eligibility for Title IV-E payments. Nonetheless, the preamble to the rule states that these Title IV-E children receiving Medicaid "must have in their Medicaid file a declaration of citizenship ... and documentary evidence of the citizenship ... claimed on the declaration." 71 Fed. Reg. at 39216.

In the DRA, Congress allowed you to exempt individuals who are eligible for other programs that require documentation of citizenship. The IV-E program is precisely such a program. I therefore urge you to revise 42 CFR 435.1005 to add children eligible for Medicaid on the basis of receiving Title IV-E payments to the list of groups exempted from the documentation requirement. Foster children in the care of the state need immediate access to medical coverage. There is no reason to delay their Medicaid coverage when child welfare agencies have already verified that they are citizens or to add unnecessary and duplicative burdens to state agencies.

Among the children subject to the documentation requirements are infants born in U.S. hospitals. Newborns will not have birth records on file with state Vital Statistics agencies. While the rule allows extracts of a hospital record created near the time of birth to be used as proof of citizenship, 42 CFR 435.407(c)(1), and a medical (clinic, doctor, or hospital) record created near the time of birth to be used in the "rarest of circumstances," 42 CFR 435.407(d)(4), there is no reason that states should have to obtain this information. There is also no reason that newborns should experience delays in receiving Medicaid coverage while these documents are obtained. When a state Medicaid agency pays for a child's birth in a U.S. hospital, the child is by definition a citizen. Further proof should not be required for newborns whose birth is paid for by a state's Medicaid program. Risking the health of newborns and increasing the potential for uncompensated care is unnecessary in this situation.

I strongly recommend that 42 CFR 435.407(a) be amended to specify that the state Medicaid agency's record of payment for the birth of an individual in a U.S. hospital is satisfactory documentary evidence of both identity and citizenship.

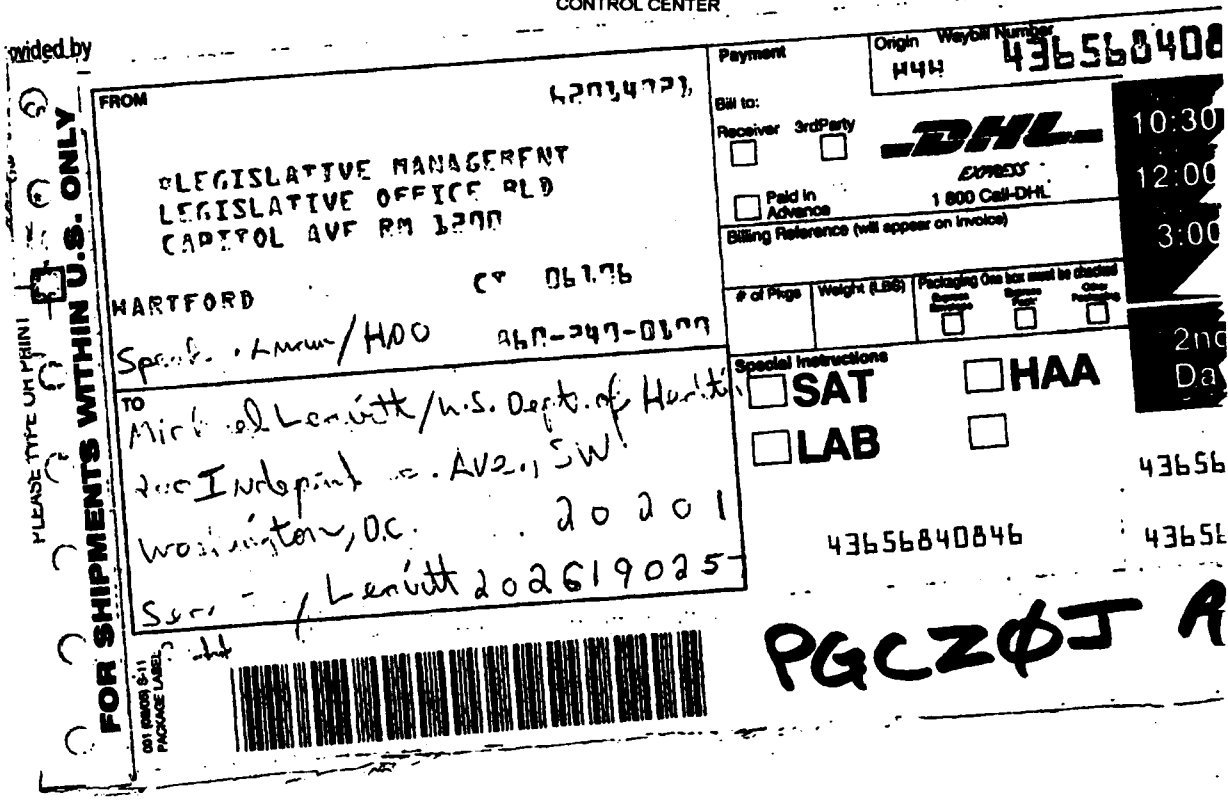
Thank you for your time. Please contact me with any questions you may have.

Sincerely,

James A. Amann
Connecticut Speaker of the House

STATE OF CONNECTICUT
OFFICE OF THE SPEAKER OF THE HOUSE
HARTFORD, CONNECTICUT 06106

Michael O. Leavitt
Secretary, United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201



provided by

PLEASE TYPE OR PRINT

FOR SHIPMENTS WITHIN U.S. ONLY

FROM

LEGISLATIVE MANAGEMENT
LEGISLATIVE OFFICE BLD
CAPITOL AVE RM 1200
HARTFORD CT 06106
Speak. Amm/HOO 860-240-0100

TO

Michael Leavitt/U.S. Dept. of Health
200 Independence Ave., SW
Washington, DC 20201
Sec. / Leavitt 202619025

Payment
Bill to:
Receiver 3rdParty
Paid in Advance

Origin Waybill Number
HHH 43656840846

DHL EXPRESS 1 800 Call-DHL

Billing Reference (will appear on invoice)

# of Pkgs | Weight (LBS) | Packaging (box used to checked)

Special Instructions
SAT HAA
LAB

10:30
12:00
3:00
2nd Da

43656840846 43656

PGCZØJ A

691 (08/03) 5-11
PACKAGE LABEL

5917929

Secretary's Correspondence

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF THE SECRETARY
EXECUTIVE SECRETARIAT

From:	**James A. Amann**	*OS#:*	**081120060010**
Organization:	**State Representative**	*Date on Letter:*	**8/9/06**
City/State:	**Hartford CT**	*Date Received:*	**8/11/06**
On Behalf Of:		*Type:*	**State Government**
Subject:	**Forwards comments on the Medicaid Citizenship Documentation Interim Final Rule**		

Assigned to:	**CMS**	*Dep.ES:*	**Ashley Files**
PC:	**Suzanne Hassett**	*Date Assigned:*	**8/11/06**
Action Required:	**Direct Reply**	*Date Reassigned:*	
		Reply Due Date:	**8/25/06**

Info Copies To:

Interim (Y/N): **No** *Date Interim Sent:*

Comments:

File Index: **PO-2** *CCC:* **Elaine Gross**

138

LEGAL ASSISTANCE FOUNDATION
OF METROPOLITAN CHICAGO

111 West Jackson Boulevard
Suite 300
Chicago, Illinois 60604-3502
312.341.1070 Phone
312.341.1041 Fax
312.431.1206 TDD
www.lafchicago.org

August 10, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2257–IFC
Mail Stop C4–26–05,
7500 Security Boulevard
Baltimore, MD 21244–1850

Re: Medicaid Program: Citizenship Documentation Requirements
Interim Final Rule, 71 FR 39214 (July 12, 2006)

Dear Secretary Leavitt:

The Legal Assistance Foundation of Metropolitan Chicago (LAF) is a non-profit legal services organization serving the low-income population of Cook County, Illinois including Chicago. We advise and represent many applicants and recipients seeking to obtain and keep Medicaid.

The provisions of the July 12 Interim Final Rule ("IFR") which exclude from the documentation requirements all Medicare beneficiaries and most of those receiving SSI are critically important and beneficial. In addition, provisions allowing states to use the SDX system to verify citizenship for those SSI recipients not subject to the exemption, and allowing states to do a vital records match in lieu of requiring a birth certificate to establish citizenship, are important options to ease the verification process. The following are comments on other parts of the IFR.

1. Children Receiving Foster Care Benefits Under Title IV-E Of The Social Security Act Cannot Be Required Under Deficit Reduction Act §6036 To Document Their Citizenship

Congress imposed the new documentation requirements only on an individual who:

> declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title [i.e., Medicaid] . . .. 42 U.S.C. § 1396b(i)(22).

Children receiving foster care benefits under Title IV-E are not covered by the above language and therefore may not be subjected to the citizenship documentation requirements. Foster children do not declare under § 1137(d)(1)(A) of the SSA to be citizens or nationals of the United States for the purpose of getting Medicaid. When such children do demonstrate their citizenship (or have it demonstrated on their behalf), they do so for the purpose of getting foster care benefits. They then get Medicaid because they have been found to qualify for foster care. Because foster children never declare to be citizens under 1137(d)(1)(A), they do not fall within the ambit 42 U.S.C. §

1396b(i)(22) and may not legally be subjected to its documentation requirements.

CMS has statutory authority under 42 U.S.C. § 1396b(x)(2)(C) to exclude from the documentation requirements additional groups. When children are required to demonstrate their U.S. citizenship or nationality in the process of qualifying for Title IV-E benefits. in this regard they are similarly situated to SSI beneficiaries and it makes no sense to treat them differently. The availability of Medicaid to meet the medical needs of the children they are agreeing to care for is an important factor in would-be foster parents' decisions regarding participation in that program. Requiring foster children to document citizenship again is unnecessary, results in unnecessary expenditure of scarce state resources, and will limit access of this vulnerable population to necessary medical care.

CMS should amend 42 C.F.R. § 435.1008 to include children receiving benefits under Title IV-E as a population that is exempt from the DRA §6036 documentation requirement.

2. The IFR Impermissibly Converts The Provision Of Documentary Evidence Into An Eligibility Requirement For Citizen Medicaid Applicants

Section 6036 of the DRA did not impose a new eligibility requirement on applicants for or recipients of Medicaid. Rather, it imposed a new condition on the states for receipt of FFP. The eligibility requirement for Medicaid remains the declaration of citizenship or qualified alien status called for by § 1137(d) of the SSA, a section that is specifically referenced by § 6036.

The IFR as written, however, would convert the provision of documentary evidence of citizenship into an eligibility requirement for citizen Medicaid applicants. The IFR prohibits states from providing medical assistance to a person before (s)he has presented that evidence. This approach is not legally permissible.

The text of § 1137(d)(1)(A) makes the "condition of eligibility" for Medicaid "a declaration in writing, under penalty of perjury" that the individual "is a citizen or national of the United States . . .." Nothing in § 6036 changes this eligibility requirement, as all the amendments to the Medicaid Act in that section are made to 42 U.S.C. § 1396b, which deals with financial reimbursement to the states, not individual eligibility for benefits. In addition, 42 U.S.C. § 1396a, which does concern individual eligibility, provides in § 1396a(b) that:

> The Secretary . . . shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan – . . . (3) any citizenship requirement which excludes any citizen of the United States.

The IFR ignores this statutory language and makes the provision of evidence of citizenship an eligibility requirement for receiving Medicaid. CMS should, by amending 42 C.F.R. § 435.407(j) or otherwise, require that applicants for Medicaid who declare they are citizens or nationals of the United States must, if otherwise eligible, be given Medicaid benefits during the reasonable

opportunity period they have to acquire evidence of their status.

3. CMS Should Amend 42 C.F.R. § 435.407(a) Or (b) To Make A Record Of Medicaid Or Other Insurance Payment For A Child's Birth In The U.S. Acceptable Evidence Of That Child's Citizenship

This will save valuable State resources, and support other efforts to insure the maximum access to necessary medical care during a child's critical first year.

4. CMS Should Exempt Additional Groups From The Documentation Requirements

a. Former beneficiaries of Medicare or SSI, i.e., people who have been on either of those programs in the past but who no longer are (for whatever reason), should be exempt from the documentation requirements. They have already established citizenship and identity that is the basis for exempting current Medicare and SSI recipients. CMS should clarify that proof of previous receipt of Medicare or SSI will also exempt a person from the documentation requirements.

b. CMS should determine all other codings and entries of any sort on the SSA database which provide the necessary information, should approve those cross-matched types of information as acceptable verification of the required documentation, and should exempt the groups they identify from the documentation requirements.

5. CMS Should Create A Meaningful Outreach Program As Required By DRA § 6036 (c)

The IFR does not describe or otherwise address any "outreach program" designed to inform and assist those affected by the new documentation requirements. This ignores the mandate of §6036 (c) of the DRA, and has left beneficiaries and states uncertain as to what is mandated, permissible or prohibited with regard to helping beneficiaries comply with these new provisions. CMS should develop an outreach program that will assist those whose eligibility might otherwise be frustrated by the new rules.

The documentation provisions of § 6036 are directed to the states' ability to get FFP for the Medicaid services they provide. If read as written by Congress, it is the states' FFP, not an individual's eligibility, that is at stake if the evidence of citizenship is not produced. As such, it is the states that have the greatest stake in seeing that the evidence of citizenship is acquired, and if they deem it advisable to do so they should be able to pay to acquire a qualifying document. But the IFR states that beneficiaries are responsible for the cost of qualifying documents, and there are indications that CMS has informed the states that the federal government will not reimburse them if they pay for the required evidence.

The IFR should be amended so that states may pay for citizenship and identity documents necessary to meet their obligations under § 6036 of the DRA; may do so without requiring a showing of a "good faith effort" by the applicant, and will be fully reimbursed by the federal government for the cost of acquiring those documents. Nothing in § 6036 suggests that Congress intended to deny

Medicaid benefits to people who are able to identify documents that verify their citizenship status but lack the resources to pay for those documents. Medicaid is a means tested program and its beneficiaries by definition do not have disposable income. CMS should clarify that states may pay for any necessary documentation that may be identified and that the federal government will, pursuant to 42 U.S.C. § 1396b(a)(4), fully reimburse the states for any such costs.

Outreach should be provided effectively with regard to "special populations." As written, §435.407(g) neither provides sufficient guidance regarding a state's responsibilities nor identifies all those who will need assistance. As recipients of federal funds, state Medicaid agencies have a responsibility under both § 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act to provide sufficient assistance to people with disabilities to afford them the same opportunity to benefit from Medicaid as is available to people without disabilities. See e.g. 28 C.F.R. §§ 35.101(b)(3)(ii) and 35.130(b)(8). This responsibility to assist cannot legally just be shifted to a "representative", as the IFR currently suggests. CMS should clarify the circumstances under which the Medicaid agency will be responsible for providing assistance to people with disabilities, and provide examples of the scope of assistance necessary for this population.

CMS should expand the list of reasons why a person may require special assistance to include, for example, people with limited English proficiency (LEP), and everyone who is homeless or who has been displaced by a natural disaster, such as a hurricane or a fire. In addition, CMS should clarify that states can extend the reasonable opportunity period for the period that they and the applicant deem necessary to allow any applicant, but especially those deemed to be in a "special population", time to comply with the documentation provisions.

6. The Documentation "Hierarchy" In The IFR Is Unnecessary, And Will Result In Improper Delays And Denials Of Needed Medicaid Services

The IFR establishes an elaborate hierarchy for the documents that will be deemed acceptable verification of citizenship status. Neither § 6036 of the DRA nor any administrative requirement mandates such a structure. The proposed hierarchy will at a minimum cause both state Medicaid agencies and would-be Medicaid beneficiaries to waste time unnecessarily seeking evidence of higher priority when perfectly adequate evidence is readily available.

Evidence either does or does not verify citizenship, and the IFR sets forth a long, if incomplete, list of evidence that CMS has deemed to be acceptable. If evidence anywhere on that list is available to an applicant or beneficiary, that evidence should be accepted in the first instance. There is no justification for turning the desire for evidence of citizenship into an exhausting process of attrition. The IFR should not require that certain evidence be pursued, or provided, when other acceptable evidence is more readily available.

If CMS retains the approach in the IFR, it should retain the level three and level four documentation options. Without those options, the documentation rules will force even more eligible citizens out of the Medicaid program and increase the health risk to them and the financial burden on governmental entities that will have to provide them with uncompensated care.

People who, for reasons ranging from mental illness to natural disasters to past discrimination, simply cannot provide any of the listed documents, need additional verification options. The IFR in theory affords the ability to establish citizenship through the affidavit of others, but that procedure is so cumbersome that it has little merit. CMS should amend 42 C.F.R. § 435.407 to allow a person who cannot acquire any of the listed documents to explain why the documents cannot be acquired, and to allow a state to provide Medicaid to that person if it finds the explanation and the declaration of citizenship to be credible. If the person is incapacitated to such a degree that (s)he cannot provide an explanation, the person's guardian or representative should be able to provide it instead.

7. Originals Or Certified Copies Of Documents Should Not Be Required

The IFR at § 435.407(h)(1) specifies that only originals or certified copies of qualifying documents may be accepted to verify citizenship or identity. Section 6036 of the DRA does not impose such a requirement. Requiring originals or certified copies will increase the cost of acquiring any necessary evidence, and it will require people who already have documents such as birth certificates to have to pay for new copies that comply with this burdensome provision. In addition, if § 435.407(h)(1) is not amended, it will effectively reinstate the requirement that people apply for Medicaid in person, to make sure that their original documents are not lost, stolen, or delayed. Given the rising incidence of identity theft, it would make absolute sense for someone to take extra precautions and apply for Medicaid in person. This will enormously increase the burden on state Medicaid agencies, and will make it harder for Medicaid applicants and recipients, especially the working poor who cannot take time off from work without jeopardizing their jobs. In addition, many people fill out Medicaid applications at hospitals, clinics or other places where they go to seek medical care, and would be understandably reluctant to leave originals at those sites.

CMS should amend 42 C.F.R. § 435.407(h)(1) to say that states must accept standard business copies of qualifying documents, and must accept the documents from whomever the beneficiary has designated to deliver the documents.

8. CMS Should Not Require Documents, Especially Nursing Home Admission Documents, To Be Dated At Least Five Years Before The Original Medicaid Application Date

Certain documents listed in 42 C.F.R. § 435.407(c) and (d) can be accepted as proof of citizenship only if they are dated at least five years before the applicant's or beneficiary's original application for Medicaid. This requirement will work a great hardship, especially on those who have been in a nursing home or other institution for many years. People often enter nursing homes following a stroke or other severe medical event, and are usually not on Medicaid when they are first admitted. After the passage of years their nursing home admission papers may be the only document available that indicates their citizenship. But that document will rarely have been created five years before their original application for Medicaid. The time between nursing home admission and Medicaid application is usually much shorter. IFR § 435.407(d) does not currently require that nursing home admission papers be dated five years before application. That should not be changed. If it is changed, many people who have been in nursing homes or other institutions for years will be

unable to retain their Medicaid coverage, despite the fact that they are clearly citizens and their nursing home record establishes that fact. Additionally, birth records may be amended for many legitimate reasons that have no bearing on a person's citizenship at birth.

CMS should amend 42 C.F.R. § 435.407(c) and (d) to remove any requirement that a document must have been created at least five years before a person's initial application for Medicaid in order to qualify as verification of citizenship.

9. CMS Should Amend 42 C.F.R. § 435.407(h)(5) To Clarify That A Person Who Has Verified Citizenship And Identity In One State Need Not Verify His Or Her Status Again Upon Moving To Another State

CMS should establish a computerized documentation information exchange, expedited telephone line, or some other mechanism by which one state can easily verify whether an applicant for Medicaid has, subsequent to July 1, 2006, received Medicaid in another state and therefore does not again need to verify citizenship and identity.

10. CMS Should Simplify The Documentation Requirements To Minimize The Burden On Applicants, Recipients, And State Agencies

Based on our experience with clients who are applicants for and recipients of Medicaid, it is unclear how CMS arrived at its estimates of the time it will ordinarily take for an applicant for or beneficiary of Medicaid "to acquire and provide" the documentation required by this IFR. For example, our estimate is that the time to acquire an original or a certified copy will ordinarily be many times CMS' estimate for everyone who does not have a high level qualifying document. If Medicaid applicants and recipients decide to take the documentation to their Medicaid agency instead of risking that the documentation will get lost, the time required will be significantly increased. If they have to wait at the Medicaid agency office to see their caseworker, the time can extend to hours. CMS should simplify the documentation requirements to minimize the burden on applicants, recipients, and State agencies.

Thank you.

Sincerely,

Nelson A. Soltman
Supervisory Attorney
Health Law Project &
Public Benefits Hotline

Bob Taft
Governor

Barbara Riley
Director

OHIO Job & Family SERVICES

30 East Broad Street · Columbus, Ohio 43215-3414
jfs.ohio.gov

August 17, 2006

Dr. Mark McClellan
Centers for Medicare and Medicaid Services, Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

Dear Dr. McClellan:

The Ohio Department of Job and Family Services (ODJFS) has reviewed the interim final rule on Medicaid Citizenship documentation requirements. The new requirements for documentation of citizenship will place a hardship on the state by adding more restrictive documentation requirements for children in foster care.

As of January 2006, Ohio has 29,701 children in the foster care or adoptive systems who are determined to be Medicaid eligible. Children who are eligible for federal foster care payments should be exempt from the new citizenship documentation requirements. In accordance with Title IV-E regulations, state child welfare agencies already verify the citizenship status of foster care children in the process of determining their eligibility for Title IV-E payments.

In the interim regulations, it states that original or certified birth certificates should be provided as verification for citizenship. Often when children come into care, original documents are not readily accessible; however, the Ohio Administrative code states a copy of a child's birth certificate shall be maintained in the child's case record. Therefore, copies of the child's birth certificate should be an acceptable documentation for citizenship. Gaining access of an original or certified copy of the birth certificate will delay Medicaid coverage for children in foster care.

The Deficit Reduction Act allows HHS to exempt certain program populations where their citizenship is already verified, and children in Title IV-E foster face should be exempted under this language. Based on the above information, ODJFS is opposing the new Medicaid citizenship documentation requirements for foster children. Ohio is committed to providing the best service and options for foster children.

Sincerely,

Rick Smith

Rick Smith, Deputy Director
Office for Children and Families

RS/dh

cc: Barbara Riley, ODJFS
Rose Handon, ODJFS
Karen Minton, ODJFS
Crystal, Allen, PCSAO
Ohio Congressional Delegation

140

LEGAL AID OF WESTERN MICHIGAN

Allegan • Berrien • Cass • Ionia • Kalamazoo • Kent • Lake • Mason • Mecosta
Montcalm • Muskegon • Newaygo • Oceana • Osceola • Ottawa • St. Joseph • Van Buren
89 Ionia, N.W. • Suite 400 • Grand Rapids, MI 49503
1 (800) 442-2777 Telephone: (616) 774-0672 FAX: (616) 301-1296
website: www.legalaidwestmich.org
MCHAEL C. CHIELENS, *EXECUTIVE DIRECTOR*

August 11, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

RE: Medicaid Citizenship Documentation Interim Final Rule,
71 Fed.Reg. 39214 (July 12, 2006)

Legal Aid of Western Michigan (LAWM) provides free legal assistance to low-income people and seniors in seventeen counties in Western Michigan. A large percentage of our clients rely on Medicaid. Over the last several years, LAWM has increasingly worked to address the severe legal barriers confronting prisoners returning to the community. We have recently established a Reentry Law Project which provides legal representation to individuals with criminal records who have legal problems obtaining public benefits, employment, housing, or other services.

We are writing to comment on the interim final rule, which was published in the Federal Register on July 12, to implement section 6036 of the Deficit Reduction Act of 2005 (DRA). This provision of the DRA became effective on July 1 and requires that U.S. citizens and nationals applying for or receiving Medicaid document their citizenship and identity.

The interim final rules do not adequately protect U.S. citizens applying for or receiving Medicaid coverage from inappropriate delay, denial, or loss of Medicaid coverage and imposes burdens and requirements that are not required by the DRA. We are particularly concerned about the impact that the rule will have on returning prisoners, many of whom lack identification to demonstrate their citizenship or identity. Our comments below highlight four areas that CMS should modify in the final rule.

1. U.S. citizens, including returning prisoners, applying for benefits should receive Medicaid benefits once they declare they are citizens and meet all eligibility requirements.

Under the DRA, documentation of citizenship and identity is not required to establish an individual's Medicaid eligibility, although such documentation is required in order for the state to receive federal reimbursement for a portion of the Medicaid expenditures for the individual. 42 U.S.C. 1396b(x). Once an applicant for Medicaid declares that he or she is a citizen and meets all other eligibility criteria, Medicaid coverage for the individual should be granted. 42 U.S.C. 1320(d)(1)(A).

Although nothing in the DRA requires a delay in coverage, the preamble to the interim final rule states that applicants "should not be made eligible until they have presented the required evidence." 71 Fed. Reg. at 39216. The rule itself states that states "must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid." 42 CFR 435.407(j). In the final rule, CMS should make it clear that states may grant coverage to eligible citizens (*i.e.* individuals who have declared U.S. citizenship and who meet other eligibility criteria) while they are gathering documents such as birth certificates and photo identification cards.

In Michigan, as in many states, a large percentage of individuals exiting the prison system lack documentation such as birth certificates and photo identification cards. There are multiple reasons why former offenders often lack I.D. Some do not have I.D. on them at the time of arrest, and their I.D. and other documents are then lost or destroyed while they are incarcerated. In other cases, I.D.s are retained by prosecuting officials as evidence. In some cases individuals do enter the prison system with I.D., but that I.D. is lost by correctional officials during the person's incarceration, particularly if the prisoner is repeatedly transferred between different correctional facilities.

Upon release, it can take a great deal of time before a former prisoner obtains documents such as birth certificates and photo identification. Our office routinely sees former offenders who have spent several months attempting to get I.D. Some clients go without I.D. for over a year. Again, there are multiple reasons for the difficulty former offenders have in obtaining I.D.. Many states take several weeks or even months to provide copies of birth certificates. The increased volume of requests for such documents resulting from the DRA is likely to cause even greater delays. In addition, many former prisoners have very little money, and therefore cannot easily afford the fees charged for obtaining copies of birth certificates and other documents. It can take considerable time for those individuals to identify service providers who will assist them in covering the costs. Local service providers in Grand Rapids report that on average its costs $55 to acquire the necessary documents – an amount that many former offenders cannot afford. In

communities where funds are not available from community agencies, former prisoners must wait till they can scrape together the money for these documents. Since prisoners who lack I.D. cannot lawfully work without I.D., or even cash a check without I.D. (such as a check from a prison trust account), it is often not easy for them to get the money they need to pay for documents.

For former prisoners, obtaining a state-issued I.D. is a particular problem, since many former offenders do not have any documentation other than prison paperwork, and the Michigan Secretary of State will not issue photo identification in reliance on Department of Corrections' documents. Some former offenders are caught in a "Catch-22," where the Secretary of State insists upon a birth certificate to issue an I.D., but such an I.D. is needed in order to obtain a birth certificate. Although bipartisan legislation has been introduced in Michigan several times in the last couple of years, in recognition of the difficulties that former prisoners have in obtaining I.D., to date no provisions have been made that will enable former prisoners automatically to get identification upon release. A few states have recognized the difficulty that former prisoners have in obtaining I.D. For example, Illinois and Montana have laws requiring the Department of Motor Vehicles to exchange DOC-issued I.D. for state-issued I.D. However, in many states, including Michigan, it remains extremely difficult for former prisoners to get I.D.

Under the interim final rule, many former prisoners who have applied for Medicaid, who meet all of the state's eligibility criteria, and who are trying to obtain the necessary documentation, will experience significant delays in Medicaid coverage.

Delays in providing Medicaid coverage to released prisoners will have significant, negative consequences for public safety. Approximately 16% of returning prisoners suffer from mental illness. *See* Urban Institute, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry*, at 11 (2001). Delays in providing necessary mental health treatment for these individuals increase the likelihood that they will harm themselves or others. Moreover, research has demonstrated that the initial period after release is pivotal for the transition back to community life, and that problems during this initial period increase recidivism. *Id.* at 18. Delays in addressing the health needs of returning prisoners reduce the chances that prisoners will successfully reenter the community.

Delays in providing Medicaid coverage will also strain the capacity of "safety net" medical providers. In Michigan and elsewhere, such providers are stretched to their limits attempting to provide health care to individuals who do not meet the eligibility criteria for Medicaid (*e.g.* childless adults who do not meet the stringent disability criteria). They cannot take on the burden of providing care to individuals who are eligible but not receiving Medicaid because they have requested but not yet received documentation of citizenship or identity. In many parts of the state – particularly in rural areas - there are no safety net providers. Medicaid-eligible individuals whose

coverage is delayed because of documentation requirements will be forced to go without necessary treatment or to seek care in hospital emergency rooms – driving up the cost of care in the long run.

We urge CMS to revise 42 CFR 435.407(j) to state that applicants who declare they are U.S. citizens or nationals and who meet the state's Medicaid eligibility criteria are eligible for Medicaid, and that states must provide them with Medicaid coverage while they have a "reasonable opportunity" period to obtain the necessary documentation.

2. CMS should use the approach taken by the Social Security Administration for U.S. citizens who lack documentation of their citizenship and identity.

For the reasons outlined above, many former prisoners will have difficulty obtaining documentation of their citizenship and identity. The rule does not address situations where an individual's documents have been lost or destroyed and, despite the best efforts of the individual or a representative, the documents cannot be obtained. The rule does direct states to assist individuals with "incapacity of mind or body" to obtain evidence of citizenship, 42 CFR 435.407(g), but it does not address the situation in which a state is unable to locate the necessary documents for such an individual. As a result, under the rule if such individuals apply for Medicaid they can never qualify, and if such individuals are current beneficiaries, they will eventually lose their coverage.

As a last resort, the interim final rule allows the use of written affidavits to establish citizenship, but only when primary, secondary, or third-level evidence is unavailable, and "ONLY … in rare circumstances," 42 CFR 435.407(d)(5). The requirements for these affidavits are rigorous, and it is likely that in a substantial number of cases they cannot be met, because two qualified individuals with personal knowledge of the events establishing the applicant's or beneficiary's claim to citizenship cannot be located or do not exist. In short, the rule simply does not recognize the reality that there are significant numbers of U.S. citizens, including many former prisoners, without documents proving citizenship and without any idea that they need documents proving citizenship.

This result is both foreseeable and unnecessary. The DRA gives the Secretary discretion to expand on the list of documents included in the DRA that are considered to be "proof" of citizenship and a "reliable means" of identification. We urge that the Secretary use this discretion to acknowledge that state Medicaid agencies have the capacity to recognize when a U.S. citizen without documents is in fact a U.S. citizen for purposes of Medicaid eligibility.

The regulations for the SSI program allow people who cannot present any of the documents SSI accepts as proof of citizenship to explain why they cannot provide the documents and to provide any information they do have. (20 C.F.R. 416.1610) The

Secretary should adopt a similar approach for both identity and citizenship. Specifically, 42 C.F.R. 435.407 should be revised by adding a new subsection (k) to enable a state Medicaid agency, at its option, to certify that it has obtained satisfactory documentary evidence of citizenship or national status for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period, and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented. This approach would ensure that the clients we represent, who are U.S. citizens, can continue to receive the health care services they need. The same approach should be used for verifying identity. The interim rules fail to allow for alternative proofs, except in the case of a child under age 16 whose parent or guardian is available and able to sign an affidavit attesting to the child's date and place of birth. 42 C.F.R. 435.407(f).

In Michigan, Medicaid applicants and recipients who are former prisoners face additional obstacles to obtaining the documents specified in the interim final rule. Under policies of the Michigan Secretary of State, in order to obtain a Michigan ID or driver's license, individuals must provide both proof of identity and proof of a street address. This is an insurmountable obstacle for many former prisoners.

The Michigan Secretary of State currently requires individuals to provide documents that show a street residence address for the individual, and specifies that individuals may use

- Valid student ID from a Michigan school, college, or university displaying a Michigan address.
- Michigan school, college, or university records containing the student's name and Michigan address such as tuition invoices, receipts, class schedules, report cards, or transcripts.
- Paycheck or pay stub with the name and address of the employer.
- A gas, water, sewer, electricity, land-line phone, or cable television.
- Bank statement.
- Life, home, auto, or health insurance policy.
- Mortgage document or rental lease agreement.
- Government documents issued by federal, state, or local units of government (such as tax assessments or receipts, professional licenses).

See http://www.michigan.gov/sos/0,1607,7-127-1627-106092--,00.html.

Many former prisoners cannot meet these requirements. Some are homeless. Others are staying temporarily with others because they have no money with which to pay for rent, utilities, insurance, etc. Those individuals will not have a lease, mortgage agreement, or utility bill. Many former prisoners do not have bank accounts, and some are prohibited from opening bank accounts as a condition of parole. Those who are unemployed will

not be able to provide pay stubs. Accordingly, some former prisoners will simply be unable to provide the documents necessary to establish residency.

In order to ensure that Medicaid is not denied or terminated because an applicant or recipient who is a U.S. citizen is unable to produce the documents listed in 42 C.F.R. 435.407(e) as verification of identity, we urge CMS to include a provision allowing the state Medicaid agency to certify that it has obtained satisfactory documentary evidence of identity for purposes of FFP under section 435.1008 if (1) an applicant or current beneficiary, or a representative or the state on the individual's behalf, has been unable to obtain primary, secondary, third level, or fourth level evidence of citizenship during the reasonable opportunity period and (2) it is reasonable to conclude that the individual is in fact a U.S. citizen or national based on the information that has been presented.

3. CMS should specifically provide that identification or documents from correctional institutions can be considered in establishing identity and citizenship.

Because of the particular difficulties that former prisoners face in obtaining documentation, CMS should specifically provide that identification or documents from correctional institutions can be considered in establishing identity and citizenship. As outlined above, many former prisoners will not be able to provide any other form of documentation. Documentation prepared by correctional officials – such as Department of Corrections' identification cards or parole orders – is obviously prepared by an official, government source, with extensive information about the individual's identity.

With respect to citizenship, it should be noted that prisoners who are not in this country legally are subject to an immigration hold. Upon completion of their sentence, those individuals are then deported. Thus, the fact that a prisoner is released into the United States is strong, if not absolutely conclusive, evidence of U.S. citizenship.

4. CMS should not require applicants and beneficiaries to submit originals or certified copies.

The DRA does not require that applicants and beneficiaries submit original or certified copies to satisfy the new citizenship documentation requirement. However, CMS has added this as a requirement in the interim final regulations at 42 CFR 435.407(h)(1). This requirement adds greatly to the information collection burden of the regulations and calls into question the estimate that it will only take applicants and beneficiaries ten minutes and state agencies five minutes to comply.

Requiring original or certified copies adds to the burden of the new requirement for applicants, beneficiaries, and states. Such copies are more difficult to obtain and more expensive. Applicants and beneficiaries will have to make unnecessary visits to state offices with original and certified copies. While the regulations state that applicants

and beneficiaries can submit documents by mail, it is not likely that many applicants and beneficiaries will be willing to mail in originals or certified copies of their birth certificates. High caseloads, staffing shortages, and the enormous volume of paper handled by the Department of Human Services offices that process Medicaid eligibility result in lost documents on a fairly frequent basis. Moreover, applicants and recipients will often not be willing or able to mail in proof of identity, such as driver's licenses or school identification cards that are needed on a daily basis.

The requirement of an original or certified copy is particularly onerous for former prisoners who documents have been lost or destroyed. Former prisoners may have photocopies, but not originals. Moreover, it is frequently easier to obtain photocopies of documents - which may be available in the files of prosecutors, defense attorneys, social service agencies, or the Department of Human Services - than it is to obtain original documents. For example, our office currently represents a released prisoner for whom we have spent several months attempting to get I.D. Although we have been unable thus far to get state I.D. for this individual, a copy of his old state I.D. is in his file at the Department of Human Services. It would be ridiculous to deny such an individual Medicaid because he has been unable - even with the assistance of counsel - to obtain a current state identification card.

The requirement of an original or certified copy also will drive up the cost of compliance with the rule. Applicants and recipients - or the state agency on their behalf - will have to pay higher fees for obtaining official certification of documents that they may already have copies of on file.

We urge CMS to revise the regulation by modifying the requirement at 42 CFR 435.407(h)(1) to make it clear that a state has the option of accepting copies or notarized copies of documents in lieu of original documents or copies certified by the issuing state agency. States should be able to accept copies when the state has no reason to believe that the copies are counterfeit, altered, or inconsistent with information previously supplied by the applicant or beneficiary.

Conclusion

On behalf of the former prisoners that we serve who will be unable to produce the documents required by the interim final rules, or who will suffer hardship in producing the necessary documentation, we urge you to make the modifications outlined above. Unless such changes are incorporated in the final rules, we foresee significant harm to the health of these individuals. Moreover, delays or denials of necessary health care will increase recidivism and pose a threat to public safety.

Sincerely,

LEGAL AID OF WESTERN MICHIGAN

s/Miriam Aukerman

Miriam Aukerman
Reentry Law Project
Staff Attorney

Summit County Children Services
Responding to Child Abuse and Neglect Since 1881

141

264 S. Arlington Street ▪ Akron, Ohio 44306-1399 ▪ (330) 379-9094 ▪ Fax: (330) 379-1901 ▪ www.summitkids.org

August 8, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2257-IFC
P.O. Box 8017
Baltimore, MD 21244-8017

RE: Medicaid Citizenship Documentation
Interim Final Rule, 71 Fed. Reg. 39214 (July 12, 2006)

Summit County Children Services (SCCS), a Public Service Agency (PCSA) in Akron, Ohio, has over 1200 abused and neglected children in care. Each year, as the Chief Operation Officer, I am responsible for ensuring that necessary services are provided to children in care. I am writing to express my concerns about the Federal Medicaid Documentation Requirement. These new requirements could delay or prevent access to health and mental health services for children in foster care.

Access to health and mental health care is essential for these children to be reunified with their family successfully or adopted. Children in out-of-home care often have greater health and mental health needs than other children. Children in out-of care settings are a fragile population. Their health needs must be met without delay of medical coverage. A process that hinders, denies, or slows down access to such needed services may only serve to worsen the situation for children who have already suffered maltreatment or neglect.

Relative to children in the custody of a PCSA, the requirement for a passport, driver's license, original or certified copy of a birth certificate, or church records is unrealistic. Clearly a vast majority of children in foster care will not have a passport or driver's license. Collecting birth certificates or church records places an additional burden on states where staff and resources are already stretched thin and represents a new unfunded mandate.

The additional burden of locating the documentation for proof of citizenship may hinder our ability to provide immediate services to children removed from dysfunctional environments. At the time of removal, parents are often unable to be located, uncooperative or unavailable. If parents have this information, they may be unwilling to

share it. An assessment of their current needs and the resources available to meet those needs must be done expeditiously. The new documentation requirement would delay an already cumbersome process. The child would receive no benefit from a delay in necessary medications, mental health services and examinations.

Title IV-E currently requires a significant eligibility process that is monitored by the Federal Government and requires state agencies to verify citizenship in determining the child's eligibility for Title IV-E payments. The Deficit Reduction Act allows HHS to exempt certain populations where their citizenship is already verified. Therefore, the children already identified as title IV-E eligible should be exempted from the new citizenship requirements.

Summit County Children Services strongly opposes the new Medicaid Citizenship Documentation requirements as they apply to foster children. Please exempt the foster children from the new requirements.

Sincerely,

Katerina Papas,
SCCS Chief Operating Officer

142

Janet Napolitano, Governor
Anthony D. Rodgers, Director

AHCCCS

Our first care is your health care
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

801 East Jefferson, Phoenix AZ 85034
PO Box 25520, Phoenix AZ 85002
phone 602 417 4000
www.ahcccs.state.az.us

July 27, 2006

Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Mail Stop: C4-26-05
Baltimore, MD 21244-1850

Attention: **CMS–10184**

Re: Agency Information Collection Activities: Proposed Collection — Payment Error Rate Measurement of Eligibility in Medicaid and the State Children's Health Insurance Program (SCHIP)

Dear Dr. McClellan:

The Quality Compliance Administrator for the Arizona Health Care Cost Containment System (AHCCCS) respectfully submits this comment letter on Medicaid and SCHIP Payment Error Rate Measurement. We are commenting on the agency information collection notice published in the May 26, 2006, *Federal Register* (71 *FR* 30409) for the Centers for Medicare and Medicaid Services (CMS).

We appreciate that CMS addressed in its May 26, 2006 notice a number of the issues APHSA raised in their November 5 comments. We are also encouraged that CMS has taken initial steps to seek consultation from states as it further develops the PERM requirements. However, we are submitting the following comments and suggestions detailing our remaining concerns and requests for clarification, including:

- Increased transparency and collaboration in the development of PERM;
- Clarification on the eligibility component of PERM reviews;
- Intersection of PERM and other programs that have a fraud and abuse component, including the new Medicaid Integrity Program (MIP);
- Transition and implementation issues related to "pilot states";
- Definitions of the program integrity requirements as they relate to the SCHIP program; and
- Methodology issues related to review of active and negative cases.

We believe that CMS' previous announcements contain inadequate information to evaluate fully their impact on our state.

A. Background

- CMS stated that it convened an eligibility workgroup to obtain recommendations for measuring Medicaid and SCHIP improper payments based on eligibility errors. We appreciate that CMS took advantage of the expertise of states and were pleased to read in the Supporting Statement that the agency accepted many of these recommendations. In the spirit of transparency, we feel that CMS should make these recommendations public and, where appropriate, provide an explanation for its decisions in relation to these recommendations.

- In the Supporting Statement, CMS indicates that states shall "Review eligibility in the same year that the states are selected for Medicaid or SCHIP FFS and managed care reviews. The State of Arizona is concerned that a list has not yet been provided indicating which states have been selected to complete PERM for SCHIP and during which year. If selected for FFY07, beginning in October of 2006 the state would need time to work with our Information Systems Division in order to be able to pull a sample.

- The Supporting Statement indicates that states selected for review must submit an initial eligibility sampling plan to CMS for approval 60 days prior to the fiscal year being reviewed. We are nearing the 60 day period for FFY 2007 and as stated above need time to work with our Information Services Division to obtain information for a sample plan.

- The State of Arizona recommends that CMS waive SCHIP's provision that imposes a 10 percent cap on administrative expenses during the year when a state does its SCHIP PERM review. States will need to invest significant resources in administrative costs in the year they are subject to the SCHIP PERM review, and this cap is likely to impede their ability to fully comply with PERM and/or SCHIP regulations.

- The State of Arizona recommends that CMS not subject a single state to PERM reviews of both its SCHIP and Medicaid program in the same year. States already face a number of new burdens associated with the implementation of PERM reviews, including additional staffing and funding resources.

- The State of Arizona recommends that CMS clarify the formula that states will be required to use to calculate the state-specific eligibility error rate based on the review results. In addition, we request further clarification for the formula that will be used to calculate the state-specific payment error rate that is uniquely attributable to eligibility errors.

- The Supporting Statement reads that, "States will select monthly samples and conduct the reviews using a CMS standardized review methodology." The State of Arizona is concerned with the unspecified "CMS standardized review methodology." We are aware that recommendations were made by the Eligibility Workgroup and that these are not

- Reflected in the current information released by CMS. We believe it is appropriate for CMS to re-engage states and other stakeholders in reviewing and revising the methodology. In addition, we ask that CMS provide a timeline for when this methodology is expected to be available.

- The Supporting Statement reads that, "Using a standard formula, states will then calculate and report to CMS, state-specific eligibility error rates based on the review results." We recommend clarification as to the frequency of the reporting of this error rate. For example, will it be reported on a monthly basis or reported at the end of the review? Will the monthly eligibility review results have to be submitted to CMS on a monthly basis?

B. Justification

4. Duplication of Efforts

- We applaud CMS' decision to mitigate any duplication of effort for those states performing traditional Medicaid Eligibility Quality Control (MEQC) reviews and to reduce cost and burden for all states conducting pilots under MEQC. Specifically states are permitted, pending CMS approval, the option of using the MEQC traditional reviews to meet the PERM eligibility requirements for Medicaid. To assist us in understanding the available options, it would be helpful if CMS would develop a schematic and/or matrix that compares and contrasts the criteria needed under "traditional" and "pilot" MEQC reviews and PERM review criteria. We believe this will help to minimize confusion about requirements under each option and clarify any risks associated with each. The supporting statement issued with the May 26, 2006, notice also indicates SCHIP "program integrity requirements" as potentially meeting PERM review. To this end, we ask that CMS also include SCHIP criteria in any such schematic or matrix.

- In addition, in its Supporting Statement, CMS indicates that it will allow states to use traditional MEQC reviews to meet the PERM requirements. This option is appealing to states, including those using the traditional method and those in "pilot" MEQC projects, so that they can minimize any duplication of effort. We recommend that CMS ensure that we have the flexibility to use the traditional MEQC method in the year we are selected for PERM review and the ability to revert to "pilot" MEQC methods in non-PERM review years, at our option. To streamline this process and facilitate successful, accurate substitution of the programs, we ask that CMS provide guidelines for the steps entailed in the conversion from traditional to pilot MEQC methods. In addition, we recommend that we retain this substitution option in years when states are chosen for SCHIP eligibility reviews.

- CMS also should take steps to inform states of the reimbursement for staff time and other expenses to comply with the PERM regulations. We believe it is appropriate that CMS provide 100 percent reimbursement to states that conduct the PERM review as well as for those that choose to substitute MEQC for PERM reviews.

- This section seems to imply that a state's use of the PERM sampling plan to perform MEQC reviews satisfies both PERM and MEQC reporting requirements. However, PERM review requirements are fundamentally different from MEQC or, when applicable, SCHIP quality control requirements. We are concerned that the rates derived from such a combination may satisfy PERM requirements but be inherently flawed for MEQC reporting.

- We need clarification on the scope of "CMS approval" of a state's PERM sample plan (Medicaid or SCHIP). Specifically, we would support the inference in the Supporting Statement that such approval of a state's sample plan means that the agency also approves a state's eligibility review methodology.

- We appreciate CMS' efforts to "make the active case review requirements less stringent than required under the MEQC program." We request additional information on the differences and steps CMS has taken. Specifically, we are interested in how verification requirements have been minimized, what case exclusions from the universe are allowed, and under what circumstances will states be able to cite cases where eligibility cannot be determined as "undetermined"?

- In the Supporting Statement, CMS indicates that "states can cite cases where eligibility cannot be determined as 'undetermined.'" We request that CMS clarify at what point a review would be shown as "undetermined" in the review process and the documentation that CMS will require to demonstrate this.

12. Burden Estimate

- We appreciate that CMS has continued to revise its estimate of the hours required to respond to requests, now 13,180 per state, and the cost per state per program, now $532,340. However, we continue to believe that these estimates do not reflect the entirety of the burden imposed upon states. Most states have indicated that it is unlikely that they can initiate and support the eligibility effort for $532,340. To support the PERM eligibility initiative, it appears that states will need to hire and train additional staff.

  Specifically, we urge CMS to further revise its estimates to reflect the staffing and training needs, eligibility processing methodology/complexity, size of travel area/transportation mode, case record accessibility, and the range of other factors that challenge reviewer proficiency.

  In addition, it is arbitrary and unreasonable to calculate total cost (per state, per program) using a GS-12 salary as the base and the CMS fringe and overhead rates. The three figures--salary, fringe, and overhead--will vary widely from state to state.

- As discussed in APHSA's November 5, 2005, comments, budget requests for state staff must be submitted far in advance. We have already been required to submit our request for SFY 2008. We are a year three state and will be conducting PERM for Medicaid in FFY 2008. Since the list for SCHIP has not been selected, we have not requested extra staff for this. If selected for FFY 2007 we will not have time to request and train staff and if selected for FFY 2008 the staff we have requested will not be able to complete PERM on both Medicaid and SCHIP. Unless CMS provides 100 percent funding for additional personnel required under PERM, states may be forced to shift state staff from other budgeted resources to comply with PERM requirements.

  Although we recognize that this might create statistical sampling complications by reducing the equal probability that any state could be selected, we request CMS to consider alternative methodologies that would permit states to know the schedule for yearly PERM audits in advance so that staffing requirements could be anticipated.

- As we suggested in our August 15 comments and reiterated in our September 26 comments on the proposed information collection initiative, a solution to the difficulty in estimating states' burdens is for CMS to provide 100 percent reimbursement for staff time and other expenses to comply with CMS' PERM regulations. It seems likely that the first PERM round will be the most onerous, where states essentially are transferring a large body of medical review, systems, and provider information knowledge to PERM contractors. We encourage CMS to consider additional support to states during this startup phase to ensure that the process is workable and that both states and CMS are satisfied that the resulting error rates are valid, consistent, fair, and accurate. Neither CMS nor states will be well served by PERM results that are based on incomplete data, a flawed methodology, or inconsistent application. CMS could avoid considerable criticism by ensuring that states have the resources to adequately support the PERM contractors during the all-important first round.

12.4 Corrective Action Plans

- We encourage CMS to enter into a dialogue with states to identify the components of model corrective action plans so that these can be refined and agreed upon before the PERM information collection process begins. We suggest that CMS establish a steering committee or other advisory group that includes state representatives to help ensure that the PERM contractors consider all the logistical issues and address potential data collection issues before beginning their onsite and interactive work with states in collecting medical review policies, manuals, and system documentation. For states with fiscal agents, obtaining systems documentation is likely to require assistance from fiscal agent staff, which may involve contracting changes or unanticipated additional support expenses. If state representatives have the opportunity to participate through an advisory or other steering committee, states might be able to assist in reducing the "steep learning curve" facing federal PERM contractors and reduce demands on state staff to support the PERM contractors.

Sample Size Development

- We are concerned with CMS' decision to choose the same number of cases for review by each state regardless of the size and capacity of the state. Does CMS anticipate that all states will review 701 cases for eligibility, regardless of the size of the state caseload? Will there be any sample size differential based on state caseload? How will the FFS versus Managed Care samples be divided? We request that CMS provide further explanation for this decision and reconsider this approach and/or revise its burden estimate to reflect the disproportionate burden this will have on states depending on state caseload and other appropriate factors.

- In the Supporting Statement CMS indicates that the measurement will be "case-based." CMS should be aware that there are several states that determine the eligibility of the individual first and the eligibility of the case second, specifically with respect to Medicaid family cases. Consequently, it may be more appropriate for such a state to select an "enrollee-based" sample rather than a "case-based" sample. Since the eligibility of each individual enrollee is determined independently of each of the other family members, sample selection by case would produce less valid results than sample selection by enrollee. In addition, it would substantially increase the workload for the staff responsible for conducting recipient eligibility reviews. We request that CMS clarify if such states will be allowed to draw Medicaid samples using enrollees as the sampling unit rather than cases. In addition, if so, states will need additional information regarding how the formula for computing the eligibility review error rate will have to be adjusted to accommodate this modified approach.

- It remains unclear in the supporting statement the method states should employ for the active and negative reviews and for calculating the state-specific error rate. We encourage CMS to make available resources and technical assistance for states to comply with these requirements. In addition, we recommend CMS issue further details explaining how the federal contractor will calculate the national error rate for Medicaid and SCHIP.

- For the active and negative cases, CMS could assist states by providing eligibility review flowcharts. Such a flowchart would support consistency among the states.

- We also request clarification on how states should handle cases that are not subject to review or cannot be completed due to non-cooperation of recipient or collateral contact. In addition, we ask that you explain how these cases will be handled in determining a state's error rate.

Case Reviews

- We were pleased to note that CMS added an additional 2,135 hours to the 7,845 case review hours CMS estimated for supporting functions like training, supervision, quality assurance and creation of review tools, etc. However, adequate training of eligibility case reviewers alone would be in excess of 1,000 hours, thus leaving only about 1,000 hours for supervision, coordination, re-reviews, creation of review tools, tracking programs, quality assurance, etc. We recommend that CMS further revise upwards its estimate of case review hours since the current 1,000 hours is not sufficient to accomplish these supporting functions.

- We understand that CMS will soon incorporate the eligibility component in the PERM review process. We request several clarifications related to the timing of its inclusion. First, once a state completes the first PERM eligibility review, will it then get a respite of two years before it is required to do eligibility reviews for the program it did not review the last time (be it SCHIP or non-SCHIP/Medicaid and assuming that SCHIP and Medicaid are sampled separately). Instead, if all three components of PERM are done in a state in the same year, will the "eligibility" review component be independent of the reviews for the other two components. That is, will a separate sample need to be drawn for it even if all three components are being done at the same time?

- The CMS Supporting Statement indicates the active cases are divided into three strata: stratum 1 is completed applications for the sample month, stratum 2 is completed redeterminations for the sample month, and stratum 3 is all other active cases. In some states, the redetermination is often completed in one month with an effective date for the following month. CMS should provide clarification of what is considered a completed application for stratum 1 and what is a completed redetermination for stratum 2 for the sample month.
    - That is, should applications that are opened as administrative applications, such as re-openings following an appeal reversal, be excluded from the universe for stratum 1?
    - Would these applications meet the definition of a completed application for stratum 1?
    - Some states have reapplications in which a case is reopened following a termination action, such as the case that is incorrectly terminated. Would these completed reapplications be included in the universe for stratum 1 or stratum 2?

- States often experience difficulty when conducting recipient eligibility audits on negative action cases (e.g., denials and terminations) due to the unwillingness of the sampled cases to provide requested information and data. States report that the problem is exacerbated by the fact that the state has no legal authority to mandate cooperation. APHSA requests that CMS clarify the flexibility states will have in dealing with these cases. That is, what criteria will states have to legitimately declare the review of a negative action case "undetermined"?

- CMS assumed that the payment error rate would be determined by using payments for services received in the first 30 days of eligibility for new cases or newly re-certified cases (strata 1 and 2) and in the review month for ongoing We ask that CMS provide additional guidance indicating the length of time that they are permitted to obtain this information. In addition, CMS should provide guidance to states as to how they should treat cases with no paid claims for the particular month.

- The Supporting Statement indicates that CMS will permit states to exclude active fraud investigation cases from the sample. We encourage CMS to also exclude cases in fair hearing status.

- We also request clarification of "cases under active fraud investigation" which CMS uses to define states' case reviews.

- We disagree with CMS' decision to exclude an administrative period and believe that the administrative period should be allowed on strata 2, redeterminations.

- In addition, under certain circumstances, MEQC presently allows an administrative period for changes that take place in the review month or the month prior. This period allows the caseworker time to react to the change and provide timely notice without being cited in error. We request inclusion of the administrative period, specifically for stratum 3 cases, to ensure that the review reflects changes in clients' circumstances when reported in the month prior to the review month.

- We appreciate CMS' efforts to coordinate the Medicaid and SCHIP PERM requirements. However, we remain concerned with a number of inconsistencies or lack of information in the notice that is critical to states meeting the PERM requirements. The Medicaid and SCHIP program do not always have corresponding "program integrity requirements." As such, we ask CMS to further clarify the guidelines that states may use to ensure their SCHIP programs can be appropriately substituted for PERM.

- We recommend that payment error rates include a payment error tolerance threshold. During the PAM pilot, in the mental health capitation sample, approval of the new rates by CMS was extremely delayed. The 2003 plan year rates were to go into effect on 7/1/03. Rate approval was not received until the end of October 2003 causing the months of July through October to be paid incorrectly. Due to the number of adjustments required the October 2003 payments were adjusted outside of the allowable 60 days. This affected 156 cases in our Title XIX Managed Care sample and 45 cases in our Title XXI Managed Care sample. In the Title XIX Managed care sample the dollar error rate was affected by $592.92. This accounted for 6% of our dollars in error. In the Title XXI sample, the dollar error rate was affected by $768.70. This accounted for 7% of our

dollars in error. Because of issues out of the agency's control, PERM eligibility reviews should allow for at least a $12 payment error tolerance threshold. We wish to note that, in comparison, USDA allows a $25 payment error tolerance threshold.

- We wish to reiterate a comment from the November 5, 2006, letter written by APHSA to CMS. "Providers historically are very guarded about the confidentiality of their files, and can be expected to provide a challenging environment to contractors requesting records. Many state programs routinely request records multiple times and still must resort to creative tactics, such as having fiscal intermediaries assist in getting complete records. We encourage CMS to implement incentives in PERM contractors' statements of work to ensure these contractors have thorough data collection protocols for identifying providers and obtaining complete documentation." We are concerned that if CMS' contractors are less persistent than we are in obtaining provider records, contractors could unintentionally inflate states' PERM rates. Experience from participating in the PAM Pilots has shown us that obtaining adequate documentation can be the most labor-intensive part of claims audits. Thus, we suggest that CMS collaborate with states to develop model letters, other processes, and guidance to ensure provider cooperation. States also verify medical necessity determinations with physicians and we encourage CMS to include this step in the contractor work plans, even though this might prove difficult in rural states where providers can be unavailable in some areas.

Collections of Information Employing Statistical Methods

- We are concerned that there is no specific provision for states to re-review audit findings or rebut initial error determinations. In some situations, we may be able to explain apparent errors by reviewing the case or expending additional effort in obtaining or interpreting provider documentation. Some errors could arise from the need for insight in interpreting states' medical policies, and these interpretation cases could easily be resolved through a process where we are formally permitted to review all errors using the documentation collected and used by the contractor before final error rates are established. We encourage CMS to explicitly develop a formal process for us to re-review all errors before final error rates are established. In addition, we also encourage CMS to create provisions for providers to appeal the medical findings portion or, alternatively, to create a mechanism by which providers could challenge medical error payment recovery.

Miscellaneous

- As noted in our previous comments, we believe that the PERM program can be improved through increased transparency, including through process clarifications around deadlines and expectations for states. We recommend that CMS develop some form of "PERM

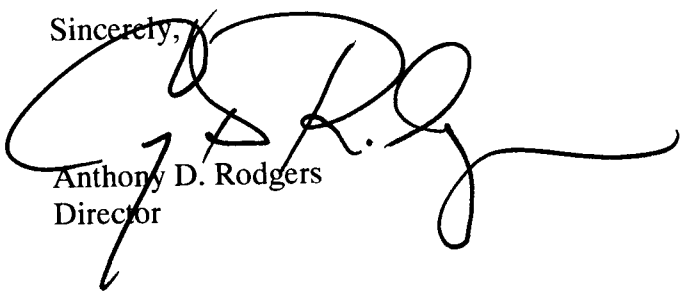
project plan" that can guides states in audit steps, responsibilities, timelines, and completion expectations. Such a resource would improve efficiency and effectiveness of CMS's PERM program and would minimize confusion among states, thereby helping to reduce questions and ongoing technical assistance needs from states.

- We feel that we are struggling with the burden of anticipating the PERM process and deadlines in the short term. As such, we encourage CMS to make available as soon as possible, anticipated schedules for fiscal year 2007 and each subsequent year in a timely fashion. Advance notice of the PERM schedule deadlines is critical to our planning, including their organizational and budgetary processes.

- Several new projects and initiatives are now underway at the federal and state levels. As with the MEQC program, although distinct, many of these initiatives have overlapping goals and functional steps for implementation. Specifically, the new MIP is likely to have some overlap with PERM. We ask that the CMS division administering PERM collaborate with its counterparts who are developing and implementing the MIP to minimize any duplication of efforts and clarify how the programs may overlap and/or interact. WE also ask that CMS indicate whether the PERM review results will be provided to the new MIP and how such findings might be used.

We appreciate the opportunity to comment on the Agency Information Collection Activities: Proposed Collection— Payment Error Rate Measurement of Eligibility in Medicaid and the SCHIP. If you have any questions, please do not hesitate to contact me or Kim Wilson at (602) 417-4563.

Sincerely,



Anthony D. Rodgers
Director